

VOICES FOR UTAH CHILDREN | AUGUST 2021

WHO'S HELPING KIDS IN COURT?

HOW NEW POLICIES ARE IMPACTING
UTAH CHILDREN'S RIGHT TO A DEFENSE ATTORNEY
IN JUVENILE DELINQUENCY COURT

EXECUTIVE SUMMARY

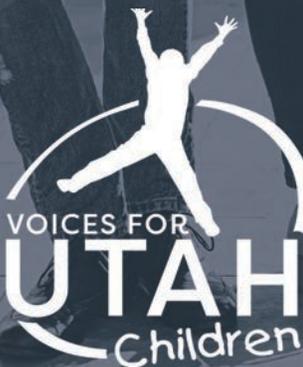
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ACKNOWLEDGMENTS



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GLOSSARY

Juvenile Court Terms & Definitions

Adjudication:

The term used in juvenile delinquency cases to indicate that a youth has been found to have committed a delinquent act. This is similar to being found guilty in adult criminal court.

Arraignment:

The initial hearing after a petition has been filed where: the alleged offenses are read; the youth is advised of their rights; and the youth asked to admit or deny the offenses.

Counsel:

This term is used to refer to an attorney/lawyer. Court participants may also use terms like advocate, counsellor, or pleader to refer to a lawyer. Counsel means someone who assists their client with advice (or "counsels" their client), and pleads for that client in open court.

Defense Attorney

A lawyer appointed by the court (free to the defendant), or hired by an individual, to: represent that person in court processes; protect their rights; ensure due process; and represent their interests.

Delinquency:

Instead of calling a young person's violation of law a "crime," juvenile courts use this term. In general, delinquency refers to legal matters before a juvenile court which involve youth who have violated any federal, state or local law, or municipal ordinance.

Delinquent Youth:

Young people under the age of 18 who have committed a violation of the law.

Detention Hearing:

A hearing that is held within 48 hours of a youth's admission to a detention facility. At this hearing, a juvenile court judge decides if the youth should continue to be held in detention, be returned home, or placed in some other court-ordered situation.

Disposition:

A court order after adjudication. Similar to the "sentence" an adult would receive in criminal court.

Dispositional Report:

A report written by a probation officer about a youth's mental, physical, and social history. Includes any assessment results, as well as the probation officer's recommendations to assist the juvenile court in making a disposition.



Hearing

A session held before a judge for the purpose of deciding issues of fact and law, in a court case.

Indigent

Whether or not someone can afford an attorney or needs one appointed from the State.

Petition

The term used in juvenile court instead of "criminal charge." When a prosecutor files a petition in the juvenile court, it means the young person has been officially accused of delinquent behavior.

Plea in Abeyance

When an admission of guilt by a youth is put on hold while the youth completes court-ordered activities. When those activities are completed, the youth's admission of guilt is withdrawn and the petition dismissed.

Pretrial Hearing

Scheduled after an arraignment, to explore or resolve any additional legal issues prior to the case being resolved either by trial or plea agreement.

Proceeding

The form and manner of conducting judicial business before a court or judge. Each possible step in a court case, from its commencement to the final judgment, is called a proceeding.

Prosecutor

A government lawyer who represents the interests of the government and the public in court.

Restitution

Money, goods, or services that a youth is responsible for giving to a person who has been harmed by an offense the youth has committed. The money, goods, or service restored to the impacted person is meant to compensate them for their loss resulting from the offense committed against them.

Review

A type of hearing before a juvenile court judge that is held after adjudication and disposition. The purpose of a review hearing is to check on the progress of a youth's case, until the court's orders have been completed by that young person.

***These terms were informed by definitions in the "Juvenile Court Terms Glossary and Acronym Guide" (Utah Juvenile Courts, 2021), as well as "Black's Law Dictionary Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern (Revised Fourth Edition, Henry Campbell Black, 1968).*



WHO'S HELPING KIDS IN COURT?

A report on how new policies are impacting Utah Children's Right to have a defense attorney when appearing in juvenile delinquency court

EXECUTIVE SUMMARY

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The primary purpose of this policy report is to assess the impact of new laws in Utah meant to improve young people's access to legal assistance when appearing in juvenile delinquency court.

It functions as a follow-up investigation into the issue of juvenile indigent defense as discussed in our [2019 report](#), "And Justice for All Kids: A Child's Right to 'The Guiding Hand of Counsel' and the State of Defense Representation for Children in Utah's Juvenile Courts."

The right of young people to be represented by an attorney in delinquency court proceedings was established in the landmark case *In Gault*, 387 US 1 (1967). In that case, the Supreme Court articulated that multiple due process rights must be afforded to children who are facing charges in a juvenile court.

Despite the clearly established rights of young people, both under *Gault* and in subsequent important legal decisions, many states - including Utah - have struggled for decades to put these promised protections in practice.

As this update report will show, though, policy changes made between 2018 and 2020 appear to have had a very positive impact on the practical fulfillment of Utah children's right to an attorney.



Key Findings

For this new report, our team of court observers attended more than 250 distinct juvenile court proceedings, between October 2020 and January 2021, across all eight judicial districts in Utah. Our main purpose was to answer these two questions:

- 1 *How often do Utah youth still appear in juvenile delinquency court without legal counsel; and*
- 2 *How often do Utah youth waive their right to be represented by an attorney?*

Here are our key findings related to those two primary questions:

Overwhelmingly, young people appearing in juvenile delinquency hearings in Utah did not waive their right to be represented by an attorney.

In more than 99% of observed hearings, it was clear that the young person had not waived their right to an attorney, and had secured legal counsel. We believe that by creating a statutory presumption of indigency, Utah has removed the primary barrier to young people fully realizing their right to legal counsel in delinquency proceedings.

Juvenile delinquency hearings in Utah rarely proceeded without defense counsel present, regardless of where the hearing was held in the state.

Youth appearing in juvenile court almost never did so without a defense attorney present in some capacity. In more than 95% of all observed court hearings, a defense attorney was present.

The vast majority of youth appearing in juvenile delinquency court were represented by a public defender.

This has remained unchanged since our 2019 report. When a defense attorney was clearly present (239 hearings), the young person retained private counsel in fewer than 5% of those hearings. In all other instances, the youth appeared to have accepted representation from a public defender appointed by the court.

While Utah's juvenile court judges rarely needed to explain the right to counsel to youth appearing in their (virtual) courtrooms, they regularly reviewed other key rights.

Utah juvenile court judges appeared to appoint counsel early in the legal process; youth almost always accepted that appointment. In a few cases, a young person appeared in court having already secured private legal counsel. Hence, we almost never observed a juvenile court judge explain to a young person their right to a defense attorney, because one was already in place.

However, judges often checked with youth that they had had enough time to talk with their defense attorney before making a decision. Additionally, we regularly observed juvenile court judges explaining other key rights that children are afforded in delinquency court, including: the right to a trial, the right not to incriminate themselves and the right to question their “accuser” in court.



Defense attorney attendance at hearings does not necessarily translate into quality legal counsel for the young people they represent.

This report does not assess the quality of legal counsel provided for the children who were the subject of hearings we observed. That said, observers' notes occasionally included remarks about defense counsel who appeared disengaged, confused or unprepared.

Even these cursory comments, made by observers without legal training, indicate that while having defense counsel present on their behalf was better than having no attorney present, these children might have been afforded more vigorous legal advocacy.

Recommendations

FOR POLICY MAKERS

Conduct an official assessment of the quality of defense counsel currently afforded to Utah children appearing in juvenile delinquency court.

It is important that a follow-up to this report be conducted when court practices have fully entered a post-pandemic era. Court observations in such an environment will help to answer whether juvenile defense attorneys will attend such a high percentage of hearings without the convenience of an online option.

We strongly recommend that this next phase of research include an assessment of how well children are being defended by counsel (particularly, court-appointed public juvenile defenders).

FOR THE COURTS

Carefully consider how to best incorporate online hearings into the court's functions going forward, regardless of public health emergencies.

While there were challenges with online hearings, there were also benefits. Most importantly, online hearings offered convenience for community and family members who wish to be engaged in juvenile court proceedings.

We recommend that the regular use of online hearings be considered in rural counties, in particular, and in cases when translation is needed. The time saved by avoiding travel for hearings may offer strong incentive for lawyers, family members, victims and the youth themselves to appear.

Use of online hearings should include:

- Simple, clearly stated protocol for participants.
- Assistance for youth and families without access to appropriate technology.
- Ongoing training and technical support for judges, prosecutors and defense attorneys regularly appearing in online hearings.
- Individual WebEx links for individual court proceedings.

Conduct an assessment of how well court translation services are functioning, from the perspective of translators and non-English-speaking court attendees.

We observed sufficient issues to believe that there is room for improvement in this area. However, we recommend that translators and those who rely on them be surveyed first, to determine to what extent attention is warranted.



Provide ongoing professional development for judges seeking to better engage and motivate youth appearing in their courtrooms.

We recommend ongoing professional development for juvenile court judges regarding:

- General youth/adolescent development;
- Interpreting youth behavior and communication;
- Motivational interviewing; and
- Building emotional intelligence.

FOR YOUTH & THEIR FAMILIES

Never waive the right to an attorney.

When the judge orders a public defender to represent a young person, they should accept that representation or hire a private attorney. The juvenile justice system has a very specific and complicated “language” of its own. Youth and their families need someone to help translate that language for them, to ensure better long-term outcomes of the youth's court involvement. .

Be available to the appointed defense attorney as much as possible.

From the moment a judge assigns an attorney to represent a youth, that attorney works for the young person. It is important that youth keep in touch with their defense attorney so that they can do a good job working for them.

If a child is not in touch with their defense attorney between court hearings, that child may not get the best legal outcomes possible. Youth and their families should make sure that their defense attorney has a way to reach them, whether by phone, email or at a physical address.

If English is not the first language of a youth, or their parent(s)/guardian(s), they should ask for a court interpreter who can translate for them.

Youth can let their lawyer or the judge know that they or their family need a court interpreter. The court will appoint a court interpreter to translate at every hearing.

“ *One of the first cases I observed was a young kid, maybe 13 or 14 years old. His charges were pretty serious. When they told him he couldn't go back to home detention, that he had to stay institutionalized, he broke down in sobbing tears. I was reminded that these are kids!*

It's heartbreaking because they are so young. They don't know what they are doing sometimes. They are still developing into their own person and that is a hard time in life. **”**

-Tanya Alvarado, Court Observer



It is not the job of a youth appearing in juvenile court to translate for their family members, or vice versa. A court interpreter is a professional who is familiar with legal terms and courtroom protocol. It is best to leave the job of translation to the court interpreter.

Defense attorneys work for their clients. If a young person needs more time to think about what is being proposed, or if they want to meet with their lawyer again to get more information, they should request to do so.

Sometimes, it can feel like taking extra time to meet with an attorney will just make a young person's involvement with the court last longer.

But it is important that youth involved in juvenile court know as well as possible what is happening to them, and to have good information about what might happen if they take certain actions.

Youth and their families should take every hearing seriously - and not be disrespectful to the judge.

How a young person acts or speaks to the judge in a hearing can make a difference in what the judge decides. Of course youth have a right to ask questions, and speak what is on their mind - but there can be consequences.

Being confrontational with a juvenile court judge, even a judge that is usually understanding and patient, could result in poor outcomes for that young person.

“Having a juvenile defender represent you is important. They are there to offer support and guidance. Having legal representation will give you the best fighting chance in the system.”

Ana Jenny Fernandez, Court Observer



OVERVIEW & BACKGROUND

The Right to an Attorney for Young People in Delinquency Court

The primary purpose of this report is to assess the impact of new laws in Utah meant to improve young people's access to legal representation when appearing in juvenile delinquency court. It functions as a follow-up investigation into the issue as discussed in our [2019 report](#), "And Justice for All Kids: A Child's Right to 'The Guiding Hand of Counsel' and the State of Defense Representation for Children in Utah's Juvenile Courts."

The right of young people to be represented by an attorney in delinquency court proceedings was established in the landmark case *In Gault*, 387 US 1 (1967). In that case, the U.S. Supreme Court articulated that multiple due process rights must be afforded to children who are facing charges in a juvenile court.

Despite the clearly established rights of young people, both under *Gault* and in subsequent important legal decisions, many states - including Utah - have struggled for decades to put these promised protections in practice.

That is why, in 2019, Voices for Utah Children produced "And Justice for All...Kids," in partnership with the University of Utah S.J. Quinney College of Law's Public Policy Clinic. The report investigated concerns regarding how well Utah's juvenile public defender system was serving youth appearing in delinquency court.

The process that unfolds in court is often very complex and hard to follow if you are not familiar with what is happening.

Having a defense attorney present, or someone to guide them through the process, helps the young person to better understand the process.

Addison Trupp, Court Observer



About Our 2019 Report

Anecdotal reports at that time indicated that young people throughout the state regularly appeared in juvenile delinquency court without a defense attorney.

Advocates also suspected that methods for determining indigency (whether or not a young person has enough money to pay for an attorney) were discouraging young people from exercising their right to counsel.

"And Justice For All...Kids," based on nearly 200 court observations conducted over the course of a year, confirmed there was cause for concern in these areas.

We reported that Utah youth often appeared without legal representation in juvenile court.

- Of all juvenile court proceedings we observed in 2018, approximately 33% involved a young person who was without legal counsel present.
- Practices related to appointment of counsel greatly varied, by both judicial district and presiding judge. Though not required by law in 2018, some Utah juvenile court judges appointed counsel for youth, regardless of the youth's established indigency, in various circumstances. However, this practice was far from universal.
- Appointment of counsel was delayed regularly, due to inconvenient and complicated indigency determination processes. As a result, youth charged with misdemeanors often lacked representation during the early, critical stages of proceedings.

- When youth requested counsel, indigency determination and other logistical challenges typically caused delays in their cases' progress. Sometimes, judges would caution youth that appointment of defense counsel would result in a delay of proceedings.
- Juvenile public defenders were being released from their representation of clients after adjudication, although ongoing court appearances still offered opportunities for additional consequences for youth (including loss of freedom through detention or other custodial orders).

We also reported that youth often waived their right to counsel without challenge or clarification by judges or other adults in the courtroom, and sometimes, under pressure from family or influenced by prosecuting attorneys.

- Youth appearing in juvenile court experienced multiple challenges to invoking their right to counsel. Waiving this important right was unintentionally incentivized through parental pressure, judicial commentary (or lack thereof), prosecutor intervention and general convenience.
- Not all judges explained to youth, in depth, the importance of having a defense attorney, and how representation might impact the outcome of the proceedings. Judges, by statute, are required to establish that youth who waive the right to counsel do so knowingly and voluntarily. However, in many cases, there was no challenge by the court of a youth's waiver of right to counsel.



- Youth understood that appointment of counsel might delay their proceedings, and sometimes expressed that not having an attorney would “get things over with faster.” Youth occasionally waived the right to counsel based on their belief that having an attorney would somehow indicate an unwillingness to take accountability for their action. Some youth waived when presented with the process required to establish indigency. Others appeared to be pressured by parents who either: feared an eventual cost to the family; perceived appointment of counsel as creating undesirable delays; or equated waiving counsel with the youth taking accountability for their actions.
- Again, in many cases, there was no countering of these assumptions by an attorney with the youth’s interests in mind. Our observations uncovered vast inconsistencies related to the information provided to youth when considering waiver of counsel, as well as the emphasis placed on educating youth about the potential consequences and outcomes of requesting or waiving the assistance of a defense attorney.

In response to these findings, our report made the following recommendations:

1 *“Improve data collection related to defense counsel appointment and hearing attendance.”*

Improving data collection should include, in addition to verification of defense counsel at each proceeding, the following information:

- Point at which defense counsel is appointed, verifying that an attorney has been assigned;

- Type of counsel present during each proceedings (including whether attorney present is the original lawyer appointed, or a substitute for retained counsel); and
- Whether juvenile is present for the proceeding.

This would allow regular assessment of whether basic rights to legal counsel are being fulfilled.

2 *“Create a presumption of indigency for youth appearing in juvenile court.”*

This would allow a juvenile to be appointed legal counsel at the earliest stage of a delinquency case, without the burden of an additional process to determine eligibility for appointed legal counsel.

3 *“Adoption of SB32: Indigent Defense Act Amendments.”*

A group of juvenile court stakeholders and child advocates, convened by the Utah Indigent Defense Commission, developed this legislative proposal. Senator Todd Weiler (R-Wood Cross) sponsored the bill. SB32 would establish that all minors “arrested and admitted into detention for an offense described in state law” and/or a youth “charged by petition or information in the juvenile or district court,” be appointed legal counsel, according to their (statutorily) presumed indigency.[1]

SB32 also would create an expectation that defense counsel be present at every stage and proceeding of a juvenile delinquency case, unless released by a judge.



4 *“Designate additional state funding for juvenile public defender services statewide, particularly focused on building capacity in rural regions.”*

Such funding would allow for hiring additional attorneys who specialize in juvenile defense, as well as enable the Indigent Defense Commission to provide technical assistance to rural counties and newly-contracted juvenile public defenders.

We are pleased to report that several of these recommendations were fulfilled in the years following the release of our initial report.

What Changed Between 2018 and 2020

Several important system changes took place after the release of our initial report. As this update report will show, these changes appear to have had a positive impact on the practical fulfillment of Utah children’s right to an attorney.

SB32 was passed by the Utah legislature and signed by then-Governor Gary Herbert in 2019.

SB32 created a “statutory presumption of indigency” for all youth appearing in juvenile court, eliminating for youth and their families the burdensome process of proving that they were poor enough to receive a state-appointed public defender. This meant youth would be less likely to appear without legal counsel in the early stages of the delinquency process.

Early automatic appointment also seemed to reduce opportunities for parental/familial influence over a young person’s decision to waive their right to an attorney.

SB32 also ensured that youth would be less likely to appear in review hearings, where their progress on court orders would be discussed, without their attorney present. SB32 made clear that only in rare circumstances would a judge release a public defender from representing a client before conclusion of the case.

The Utah Juvenile Courts updated their record-keeping practices to include the collection of key information about appointment of defense counsel, as well as counsel’s presence at hearings.

Thanks to several programming enhancements to the courts’ Court and Agencies Record Exchange (CARE) case management system, court clerks now are able to record:

- when a defense attorney is appointed;
- when a defense attorney withdraws from a case;
- whether the defense attorney (or a replacement) is present at a hearing; and
- whether representation is provided by a public defender or a private attorney.

While the courts are able to track whether youth and their attorneys show up for hearings, they don’t track the manner (video, phone, in person) in which they appear. [2]





Utah's Indigent Defense Commission secured a three-year Delinquency Defense Training Program grant from the U.S. Dept. of Justice's Office of Juvenile Justice and Delinquency Program.

This program focuses on developing targeted training and materials for attorneys who represent children in delinquency proceedings anywhere in the state. For example, project participants have released a “toolkit” to support juvenile defenders representing youth accused of sexually-based misconduct. The project has also produced a number of Continuing Legal Education presentations available remotely to juvenile defenders statewide.

Special Circumstances: The COVID-19 Pandemic

For our 2019 report, all court proceedings were observed in-person. Our intention for this follow-up report was that our observation approach would remain the same. Those plans were disrupted when in March 2020 the World Health Organization (WHO) declared COVID-19 to be a worldwide pandemic.

The COVID-19 pandemic initially forced the Utah courts to close to all in-person activity. To ensure uniformity in the operation of courthouses statewide, the Utah Supreme Court issued an Administrative Order in March 2020 that initiated the “State of Utah Judiciary Risk Phase Response Plan.” [3]

The order provided guidelines and acceptable procedures for conducting the work of the courts, including that “proceedings should be conducted through remote transmission, such as phone or video...”.[4]

Certain urgent court proceedings involving juveniles were prioritized for online hearings from the start of the lockdown, including: “shelter hearings, child welfare adjudication and disposition hearings, detention hearings, in-custody delinquency adjudication and disposition hearings, detention reviews, protective orders, and any other hearing involving a child being at imminent risk of abuse, neglect or dependency.” [5]

Later, the Utah Supreme Court and Utah Judicial Council issued an addendum, specifically for the juvenile courts, that encouraged all parties to resolve case matters by written motion whenever possible. If a hearing were required, it was to be held remotely, unless a written request was filed and granted. [6] An additional order issued in July suspended all in-person hearings and meetings until the end of the calendar year.

Our observations originally were planned to take place in the summer of 2020. During the initial lockdown, we were undecided about whether to proceed, given the uncertain landscape. By the end of summer, it became clear that the vast majority of juvenile court proceedings would be conducted online only. We weighed the benefits and drawbacks of continuing with court observations in a completely different environment (all online versus all in person).

The new online environment created an immediate issue regarding comparability of 2018 data to 2020 data. The venue for hearings was no longer a static factor in our assessment of juvenile indigent representation statewide.

The change in venue would almost certainly have an impact on the primary focus of this report: how often youth appeared in juvenile delinquency court without defense counsel.



For example, we anticipated that the “all online” situation would result in a higher than usual appearance of defense counsel, due to the convenience of online involvement (without travel), especially for rural juvenile public defenders.

It would be impossible to observe interactions between defense counsel and clients outside the courtroom, as well as any interaction between youth and prosecutors.

There would be no accessible “lobby” where informal encounters might occur, helping to shed light on potential right to counsel issues. Subtle interactions between youth, their parents or guardians, and their counsel would be more difficult to observe.

These expected realities weighed in favor of a delay of this follow-up report by a year or more. However, the online environment also meant that court observations would require no travel by our observation team, allowing us to conduct more observations in a shorter amount of time. Observations would be easier to fit into observers’ daily schedules.

In addition, there was still much to be learned from the performance of defense counsel in this new environment. It was important to answer the question of whether youth would continue to appear regularly in court without defense counsel, despite the convenience of the online hearings.

A subsequent follow-up report (in 2023 or 2024) could create a timeline of data to illustrate how online hearings impacted representation.

Finally, there were other questions that we felt would not be substantially impacted by the “all online” court environment. Most importantly, our observations could still help us ascertain whether changes to the indigency determination process were resulting in fewer waivers of the right to counsel.

Ultimately, by fall of 2020, we determined that the benefits of conducting observations in this dramatically different environment outweighed the issues created regarding comparability. We will not share in this report any specific conclusions about how the results may be impacted by changes due to the pandemic.

Rather, we invite developers of future reports to examine in greater detail how a return to a more “normal” court approach to delinquency hearings may reveal how our data were influenced by these extraordinary circumstances.



METHODOLOGY

Juvenile court observations were conducted from October 2020 through January 2021. Observation practices were greatly impacted by the COVID-19 pandemic. All juvenile court proceedings were moved to a virtual format for public health reasons.

The observation team consisted of thirteen members, eight of whom received compensation for their time (contract) and five of whom conducted observations as part of their regular employment. Contract observers received twenty dollars per documented court observation; payment was determined based on submission of completed observation forms, with related notes.

Observer Training

Team members prepared for observations of court hearings with two virtual trainings.

Marina Peña, appellate attorney with the Utah Juvenile Defender Attorneys, LLC, conducted a training on general court protocol, roles of hearing participants, important points of observation to note and the critical importance of protecting juvenile privacy at all times. Peña played a central role in the gathering and reporting of court observation data for our 2019 “And Justice For All...Kids” report.

In addition, Erin Jemison, MPA, and Devon Rose, LCSW, conducted a training for court observers on recognizing and responding to symptoms of trauma and secondary trauma that might result from participating in the court observation process.

Jemison and Rose are both formerly affiliated with YWCA Utah, a non-profit organization that engages with victims of intimate partner violence and abuse.

Once court observations began, team members met weekly as a group to discuss and clarify issues related to observation practices.

Observers also had access to ongoing technical support, as needed, from Project Coordinator Martín Muñoz and Senior Policy Analysts Anna Thomas and Ciriac Alvarez Valle (all staff members of Voices for Utah Children).

Data Collection

Observers worked from a common “Access to Counsel Court Observation Form,” organized into five sections: Hearing Type, Hearing Duration, Demographics, Representation, and Waiver of Counsel (Appendix B). A print version of the Observation Form offered additional direction regarding other items of importance that the observer might listen for, in addition to the standard questions in these five sections.

Observers took notes by hand or via computer during a hearing, then enter the relevant information into the online Observation Form. This form was created using Google Forms, a web-based software that gathers information via survey to collect data. [7]

Google Forms was free to use and offered a secure and consistent method of data reporting. The typed or handwritten notes were then submitted along with the online form. These notes were used later to cross-check all information entered into the Observation Form, and to correct any discrepancies.

For most of the project, hearings were conducted in just one or two judicial districts during a two-week period. Each week, our project coordinator worked closely with Daniel Meza Rincon, Utah's Assistant Juvenile Court Administrator, to create a schedule of juvenile court hearings taking place in a particular region. This schedule included login information allowing the court observer to join each virtual hearing.

Our aim was to conduct hearings in all Utah counties where juvenile court hearings typically are held. Five smaller rural counties conduct all their hearings in a neighboring county. We did not conduct any observations of hearings taking place in those counties.

At the outset of each week, court observers would login to the online platform, SignUpGenius, [8] to assign themselves individual hearings during that week. Through SignUpGenius, observers could see, for each hearing, the: date and time of the hearing, type of hearing, judge assigned to the case, juvenile's last name, and case number. Once an observer signed up for a particular hearing, the project coordinator sent the appropriate Webex link to access that online hearing.

The team observed a total of 251 discreet hearings in 23 of Utah's 29 counties, covering all eight judicial districts in the state. The hearings took place virtually, via the Webex platform utilized by the Utah court system. Each Webex invitation provided the case number, name of the juvenile, the type of hearing scheduled and the hearing link. In most cases, an individual Webex link was provided for one individual hearing. However, some county courts used a single Webex link for an entire day of hearings, with various individuals joining and leaving throughout the day.

*Observations included:
251 Discreet Hearings in
23 out of 29 Counties in Utah*



DATA PRESENTATION

Location of Observed Hearings

The primary aim of our court observations was to collect information regarding:

- 1) how often Utah youth appear in juvenile delinquency court without legal counsel; and
- 2) how often Utah youth waive their right to be represented by an attorney.

We attempted to attend an amount of hearings in each judicial district that was proportional to the judicial district's portion of the overall state population (See Figure 1). For example, 39.3% of Utah's overall population lives in the three counties - Salt Lake, Summit and Tooele - comprising the Third Judicial District. We conducted 32.3% of our hearings in District 3 (See Figure 2).*

We recorded other information that we thought might be of interest to policymakers and community members, including:

- How well online hearings went from a technological perspective
- The length of time spent in each hearing
- When possible, the race and age of the youth appearing before the court

Our team of thirteen court observers submitted 320 total observation forms between October 2020 and January 2021. Several hearings were attended by more than one member of our court observation team. Duplicate hearing submissions were combined and the content reconciled using observation notes.

Information from a small number of observed proceedings were disregarded from some areas of data reporting due to incomplete data. Some hearings were closed (to protect the privacy of either the youth or their alleged victims) after an observer entered the online court setting, and sufficient detail about hearing participants could not be recorded.

Several times, child welfare or other family court proceedings were included on our hearing schedule; information from these proceedings could not help to answer our primary questions, and were thus disregarded.

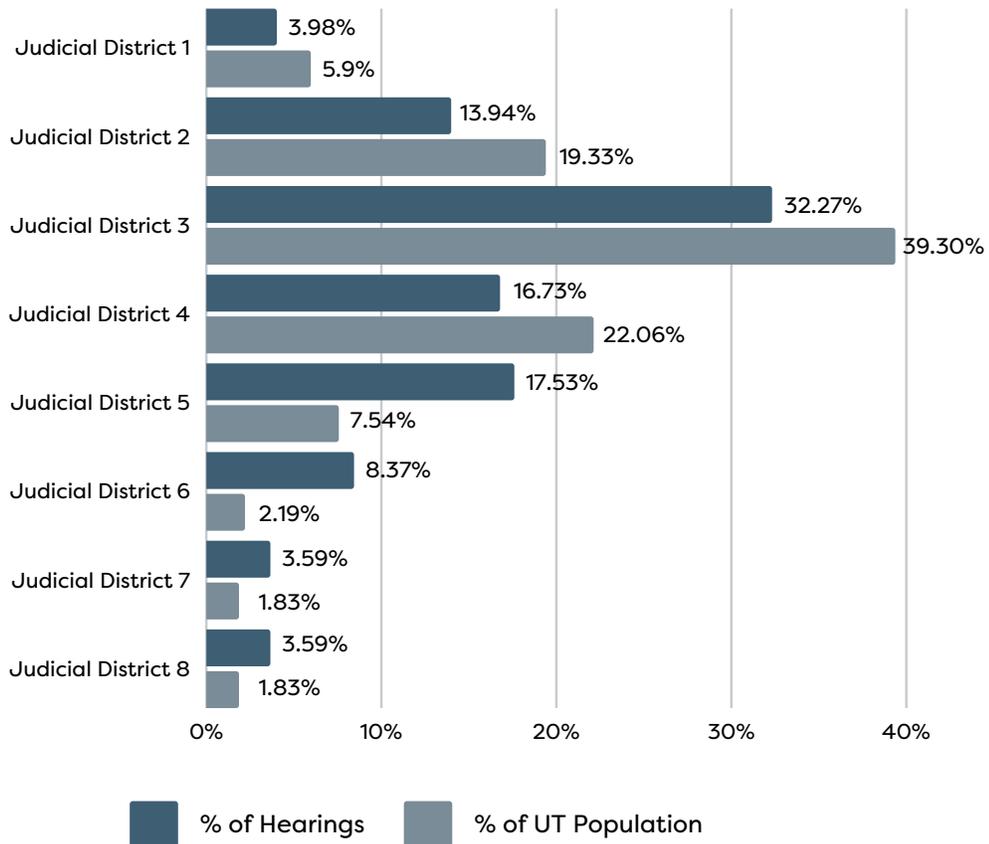
Notes from those submissions were used to confirm and clarify information submitted through the online observation forms. Notes were also used to resolve discrepancies in submitted information from multiple observers.

**See page 21 for a list of counties in each Judicial District.*

FIGURE 1. Observed Hearings by Judicial District, Compared to % of Utah population living in each Judicial District (Table) [9]

Judicial District	# of Hearings	% of Hearings	% of UT Population
District 1	10	3.98%	5.90%
District 2	35	13.94%	19.33%
District 3	81	32.27%	39.30%
District 4	42	16.73%	22.06%
District 5	44	17.53%	7.54%
District 6	21	8.37%	2.19%
District 7	9	3.59%	1.83%
District 8	9	3.59%	1.83%
Total	251		100%

FIGURE 2. Observed Hearings by Judicial District, Compared to % of Utah population living in each Judicial District (Graph) [10]



For our 2019 report, observations were conducted in person at county courthouses; this allowed us to confidently report the county (in addition to the judicial district) where the hearing was held.

With the online hearings we conducted in 2020, we could not always determine the county in which a delinquency case occurred. Because this information was not stated consistently across proceedings, either in the hearing information we received or by the presiding judge, we relied on other identifying information, such as:

- prosecutor's name (this individual would be representing the county attorney's office);
- defense attorney's name (public defenders are contracted at the county level and those contracts are public records; private attorneys often share identifying business information online);
- location of schools, therapists or community placements mentioned during the hearing; or,
- during adjudication hearings, official statements about the underlying incident.

Several rural counties in Utah have no physical juvenile delinquency court. In normal (non-pandemic) circumstances, when hearings are held in person for delinquency offenses occurring in these counties, the hearings take place in a neighboring county.

According to our information, we observed no hearings for cases in these six counties: Daggett, Duchesne, Garfield, Morgan, Piute and Rich.

Of these six, five typically refer juvenile cases to a nearby county: Daggett (uses Uintah County juvenile court), Garfield (uses Kane County), Morgan (uses Weber County), Piute (uses Sevier County) and Rich (uses Cache County).

In cases where information about the county in which the hearing took place was not clear or complete, we made a good faith assumption based on the details that were available in observation notes (See Figure 3).

Counties in Judicial Districts

- 1 Judicial District 1:
Box Elder, Cache, Rich
- 2 Judicial District 2:
Weber, Morgan, Davis
- 3 Judicial District 3:
Salt Lake, Tooele, Summit
- 4 Judicial District 4:
Utah, Wasatch, Juab, Millard
- 5 Judicial District 5:
Beaver, Iron, Washington
- 6 Judicial District 6:
Sanpete, Sevier, Piute,
Wayne, Garfield, Kane
- 7 Judicial District 7:
Carbon, Emery, Grand,
San Juan
- 8 Judicial District 8:
Duchesne, Daggett, Uintah

FIGURE 3. Observed Hearings by County in each Judicial District, Compared to % of Utah population living in each County [11]

	COUNTY	2019 Population	% of Population	# of Hearings	% of Hearings
Judicial District 1	Box Elder	56329	.22%	1	.40%
	Cache	131387	1.75%	9	3.59%
	Rich	2398	4.08%	0	0.00%
Judicial District 2	Davis	356964	11.08%	13	5.18%
	Morgan	12189	.38%	0	0.00%
	Weber	253455	7.87%	22	8.76%
Judicial District 3	Salt Lake	1152960	35.80%	66	26.29%
	Summit	41824	1.30%	3	1.20%
	Tooele	70889	2.20%	12	4.78%
Judicial District 4	Juab	12455	.39%	3	1.20%
	Millard	13743	.43%	3	1.20%
	Utah	651409	20.23%	29	11.55%
	Wasatch	32866	1.02%	7	2.79%
Judicial District 5	Beaver	6976	.22%	1	.40%
	Iron	55401	1.72%	8	3.19%
	Washington	180550	5.61%	35	13.94%
Judicial District 6	Garfield	5226	.16%	0	0.00%
	Kane	7716	.24%	2	.80%
	Piute	1711	.05%	0%	0.00%
	Sanpete	31003	.96%	13	5.18%
	Sevier	22219	.69%	5	1.99%
	Wayne	2754	.09%	1	0.40%
Judicial District 7	Carbon	21482	.67%	4	1.59%
	Emery	10666	.33%	3	1.20%
	Grand	10117	.31%	1	.40%
	San Juan	16680	.52%	2	.80%
Judicial District 8	Daggett	1073	.03%	0	0.00%
	Duchesne	20846	.65%	0	0.00%
	Uintah	36973	1.15%	8	3.19%

Hearing Type

When scheduling observations, we asked the Administrative Office of the Courts for information on all juvenile delinquency hearings in a particular judicial district (or, in some cases, county), regardless of the type of proceeding. Using this approach, we were able to observe a wide variety of proceedings, at each stage of the typical juvenile court involvement process.

Due to the unique nature of juvenile court, a single hearing sometimes included multiple proceedings. For example, a child appearing before a juvenile court judge for a review of progress related to one episode of misconduct, might be arraigned at the same time for a new episode of misconduct.

Or, a child might admit to charges in a hearing, and then receive a full or partial disposition in the same hearing.

For this reason, the number of proceedings we observed is greater than the number of distinct hearings we observed. Figure four shows each distinct proceeding, including those that occurred during multi-proceeding hearings (See Figure 4).

Figure five shows each distinct hearing, with multi-proceeding hearings listed only as “Multiple” (See Figure 5).

FIGURE 4. Total Proceedings Observed by Type (including multiple proceedings, counted separately, from a single hearing)

Proceeding Type	# of Proceedings	% of Proceedings
Detention	7	2.8%
Arraignment	50	19.9%
Pretrial	88	35.1%
Adjudication	33	13.1%
Disposition	43	17.1%
Review	90	35.9%
Restitution	3	1.2%
Plea in Abeyance	2	.8%
Other	20	8.0%
Total	336	100%

Hearing Duration

Observers also noted the duration (length of time) of each hearing. Juvenile attorneys and judges may be interested in this data, as the length of hearings may advance some understanding of the quality of juvenile defense counsel (See Figure 6).

To be clear, a longer hearing does not necessarily mean a better hearing, from the perspective of a youth or their defense. However, this information may be useful to the juvenile courts in any ongoing or future systemic improvement efforts, or to juvenile justice advocates seeking to understand youth’s courtroom experiences.

Most hearings under five minutes involved rescheduling (a “continuance”) of the hearing, almost always at the request of either the defense attorney or the prosecutor.

The vast majority of all observed hearings (74.7%) lasted more than five minutes, but less than half an hour. Hearings lasting more than half an hour were relatively rare (8.4% of all hearings), with only one observed hearing lasting more than one hour.

The longest hearings tended to be either adjudication, detention, or multi-proceeding hearings. More than 50% of each of these types of hearing lasted fifteen minutes or more (See Figure 7). The shortest hearings tended to be either arraignment, pre-trial or “other” hearings. At least 25% of each of these types of hearings lasted less than five minutes.

Note that some sample sizes are quite small in this categorization. There were only three observed detention hearings (n=3), and fewer than fifteen each of arraignment (n=12), adjudication (n=14) and “other” (n=12) hearings.

FIGURE 5. Total Hearings Observed by Type (multi-proceeding hearings as one separate category)

Hearing Type	# of Hearings
Detention	3
Arraignment	12
Pretrial	46
Adjudication	14
Disposition	26
Review	66
Restitution	10
Plea in Abeyance	0
Other	2
Multiple Proceedings	72
Total	251

FIGURE 6. Observed Hearings by Duration

Duration of Hearing	# of Hearings	% of Hearings
Under 5 Minutes	45	17.93%
5 to 14 Minutes	94	37.45%
15 to 29 Minutes	91	36.25%
30 to 59 Minutes	20	7.97%
60+ Minutes	1	.40%
Total	251	100%

Hearings were most likely to last fifteen minutes or longer in the fourth, fifth, sixth and seventh districts. Hearings were most likely to last less than five minutes in the third and eighth judicial districts. In both the first and eighth districts, hearings were most likely to last at least five minutes, but less than fifteen minutes.

Note that some sample sizes are quite small in this categorization, as well. Ten or fewer observations were conducted in the first (n=10), seventh (n=9) and eighth (n=9) districts.

FIGURE 7. Types of Hearings by Length of Time

Type of Hearing	🕒 Under 5 Minutes	🕒 5 to 14 Minutes	🕒 15 to 29 Minutes	🕒 30 to 59 Minutes	🕒 60+ Minutes
Detention (n=3)	0 0.0%	1 33.3%	1 33.3%	1 33.3%	0 0.0%
Arrestment (n=12)	3 25.0%	6 50.0%	3 25.0%	0 0.0%	0 0.0%
Pretrial (n=46)	19 41.3%	16 34.8%	9 19.6%	2 4.3%	0 0.0%
Adjudication (n=14)	1 7.1%	2 14.3%	9 64.3%	2 14.3%	0 0.0%
Disposition (n=26)	0 0.0%	13 50.0%	8 30.8%	5 19.2%	0 0.0%
Review (n=66)	5 7.6%	33 50.0%	24 36.4%	4 6.1%	0 0.0%
Other (n=12)	3 25.0%	5 41.7%	4 33.3%	0 0.0%	0 0.0%
Multiple (n=62)	14 19.4%	18 25.0%	33 45.8%	6 8.3%	1 1.4%
TOTAL %	45 17.93%	94 37.45%	91 36.25%	20 7.97%	1 .40%

FIGURE 8. Hearings in each Judicial District by Length of Time

Judicial District	🕒 Under 5 Minutes	🕒 5 to 14 Minutes	🕒 15 to 29 Minutes	🕒 30 to 59 Minutes	🕒 60+ Minutes	Total
District 1	0 0.0%	6 60.0%	3 30.0%	1 10.0%	0 0.0%	10
District 2	2 5.7%	17 48.6%	14 40.0%	2 5.7%	0 0.0%	35
District 3	29 35.8%	30 37.0%	20 24.7%	2 2.5%	0 0.0%	81
District 4	3 7.3%	13 31.7%	19 46.3%	5 12.2%	1 2.4%	41
District 5	6 13.6%	14 31.8%	17 38.6%	7 15.9%	0 0.0%	44
District 6	2 9.5%	5 23.8%	12 57.1%	2 9.5%	0 0.0%	21
District 7	0 0.0%	4 44.4%	4 44.4%	1 11.1%	0 0.0%	9
District 8	2 22.2%	5 55.6%	2 22.2%	0 0.0%	0 0.0%	9

Youth Attendance

We were able to gather some information about the youth appearing in court, as part of our observations. However, the demographics of these youth were not the focus of this project, and attempts were not made to verify subjective determinations made by observers.

Definitive conclusions should not be drawn from these data, though our conclusions do reflect general trends observed in Utah’s juvenile justice system with regards to age, gender and race/ethnicity of youth appearing in court.

Of the 251 hearings observed, youth were present 78.1% of the time. Nearly 14% of the time, the youth was confirmed to be absent from the proceeding (Figure 9).

Whether the youth was present was unclear 8% of the time (youth presence at the hearing was not a question on the official hearing observation form used by our team, and in these “unclear” cases, the accompanying notes did not provide enough information to determine whether the child was in attendance).

FIGURE 9. Youth Attendance at Observed Hearings

Youth Present	# of Hearings	% of Hearings
Yes	196	78.1%
No	35	13.9%
Unclear	20	8.0%
Total	251	100%

We did not track this metric in our original 2019 report, so we can’t determine whether online hearings or other pandemic-related circumstances impacted youth attendance at delinquency hearings.

Similarly, the method by which youth attended their hearings was not part of the formal observation process, but notes often reflected this information. Of the 196 hearings in which we were able to confirm whether a youth attended, many observation notes did not provide enough information to determine how a child attended their hearing (n=80) (Figure 10).

Of the remaining cases (n=116), a majority attended via video (67.2%). About 32% were present via audio only. Just one child appeared in person in a courtroom (and aside from the child and their attorney, other hearing participants attended remotely).

FIGURE 10. Method of youth appearance at hearing

Method of Appearance	# of Hearings
In Courtroom	1
Phone/Audio Only	37
Video	78
Unclear	80
Total	196

Age of Youth

In some hearings (n=109), the age of the young person was either explicitly stated by an individual involved in the proceeding, or otherwise obvious to the observer. For example, a judge might remind a young person that they were going to turn 18 in a few months, and that future misconduct would be handled by the adult criminal justice system.

In the majority of hearings (n=142), however, the age of the young person was neither stated nor obvious (See Figure 11).

Reviewing data from those hearings in which we were able to discern the youth's age, we found that more than two-thirds (68.8%) of the youth were between the ages of 15 and 18. About 21% of the youth were either 13 or 14 (See Figure 12).

We were pleased to see that less than 2% of the youth were age 12 or under (considering that Utah law has recently changed to

reduce the cases in which a child under the age of 12 can be petitioned to delinquency court).

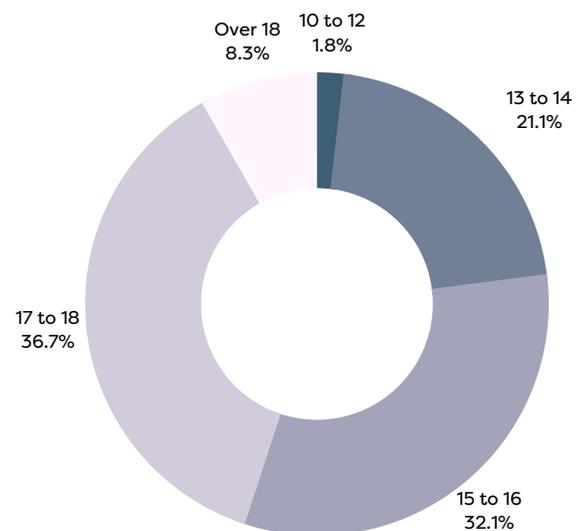
A small number of the youth (8.3%) were over the age of 18. In Utah, youth who are petitioned to the juvenile system for misconduct engaged in before age 18, can stay under the jurisdiction of the juvenile courts up until age 26, to continue to address that original misconduct.

These findings reflected our general understanding of the typical ages of youth involvement both in serious misconduct and in juvenile delinquency court. Generally, system involvement is weighted toward the higher end of the age spectrum.

FIGURE 11. Breakdown of Youth in Observed Hearings by Age (Table)

Age	# of Hearings	% of Hearings
Not Stated/Apparent	142	56.6%
10 to 12	2	0.8%
13 to 14	23	9.2%
15 to 16	35	13.9%
17 to 18	40	15.9%
Over 18	9	3.6%
Total	251	100%

FIGURE 12. Breakdown of Youth in Observed Hearings by Age (hearings where age of youth is unclear removed) (Graph)



Gender and Race of Youth

The race and gender identity of observed youth were even less likely than age to be explicitly stated during a hearing. Certain assumptions were made by observers to assess both the gender identity and racial/ethnic background of the young person.

In the case of gender, observers noted physical presentation by the youth when video was used, as well as the pronouns used by others involved with the youth, to refer to the youth.

Both of these data points demand subjectivity by the observer, and may be based on potential mis-gendering of the youth by the adults around them.

Our reporting does not reflect the youth’s personally-claimed gender identity. Hence, we refer to this characteristic as “gender presentation.” In the vast majority of cases (n=243), our observers were able to make an assumption about gender presentation (See Figures 13 and 14).

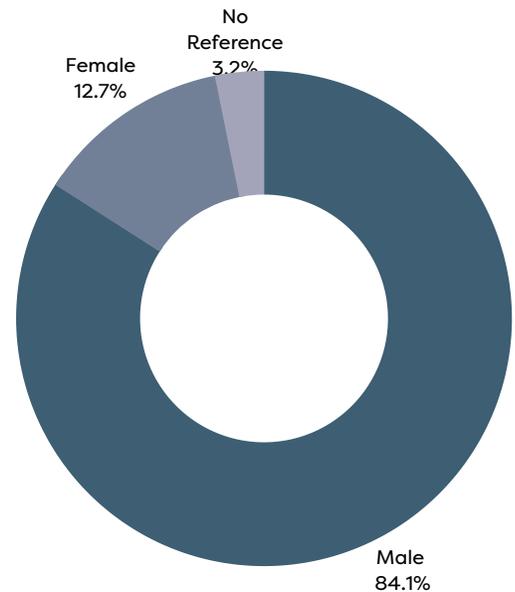
The vast majority of observed youth appeared to present as male (n=211), with a small minority appearing to present as female (n=32).

This reflects general trends in both the juvenile and adult justice systems in Utah, where most system-involved youth identify and/or present as male, with a small (but growing) population who identify and/or present as female.

FIGURE 13. Breakdown of Youth in Observed Hearing by Gender Presentation (Table)

Gender Presentation	# of Hearings	% of Hearings
Male	211	84%
Female	32	12.75%
Not Apparent	8	3.19%
Total	251	100%

FIGURE 14. Breakdown of Youth in Observed Hearings by Gender Presentation (Graph)



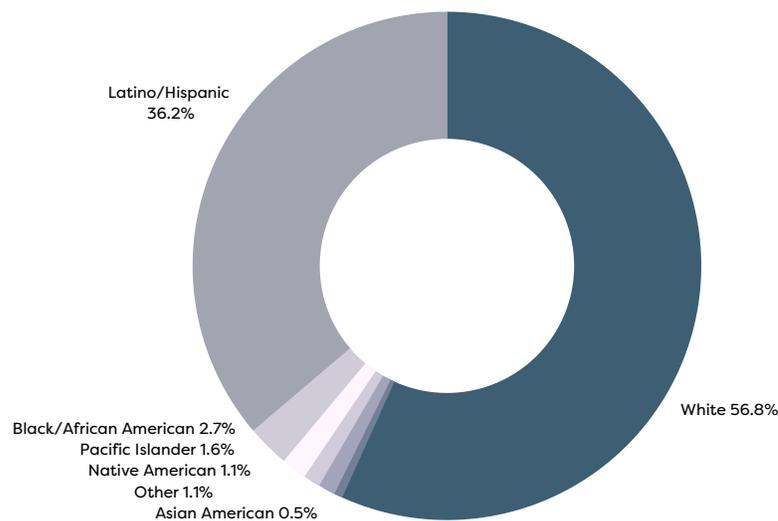
In the case of race and ethnicity, observers noted: physical presentation by the youth when video was used; ethnic traditions in the legal names of children (for example, a name that is most likely in the Pacific Islander or Southeast Asian cultural tradition); language(s) spoken by the youth and/or their family members; and any verbal reference made during the court proceeding.

These data involved observer subjectivity, too. In most cases (n=185, or 73.7% of all hearings) (Figure 15), observers felt confident making an assumption about the race/ethnicity of the youth. Among these instances, 56.8% of observed youth were assumed to be white (Figure 16). By comparison, nearly 74% of Utah youth enrolled in public schools in 2020 were identified as white (See Figures 17 and 18).

FIGURE 15. Breakdown of Youth in Observed Hearing by Assumed Race/Ethnicity (including hearings where race/ethnicity of youth is unclear) (Table)

Race/Ethnicity	# of Hearings	% of Hearings
Asian American	1	0.4%
Native American	2	0.8%
Other	2	0.8%
Pacific Islander	3	1.2%
Black/African American	5	2.0%
Latino/Hispanic	67	26.7%
White	105	41.8%
Not Apparent	66	26.3%
Total	251	100%

FIGURE 16. Breakdown of Youth in Observed Hearings by Assumed Race/Ethnicity (hearings where race/ethnicity of youth is unclear removed) (Graph)



About 36.2% of observed youth were assumed to be Latino/Hispanic, as compared to 17.6% of the public school student population statewide. Only 2.7% of observed youth were assumed to be Black or African American, which proportion is still nearly two times greater than the 1.4% of the public school student population identified as such.

As with white youth, observed youth who were assumed to be Asian American (0.5%) or “other” (1.1%) appear to be dramatically underrepresented when compared to their proportion of the public school student population (1.7% for Asian American students, 3.0% for “other” or “mixed race” students).

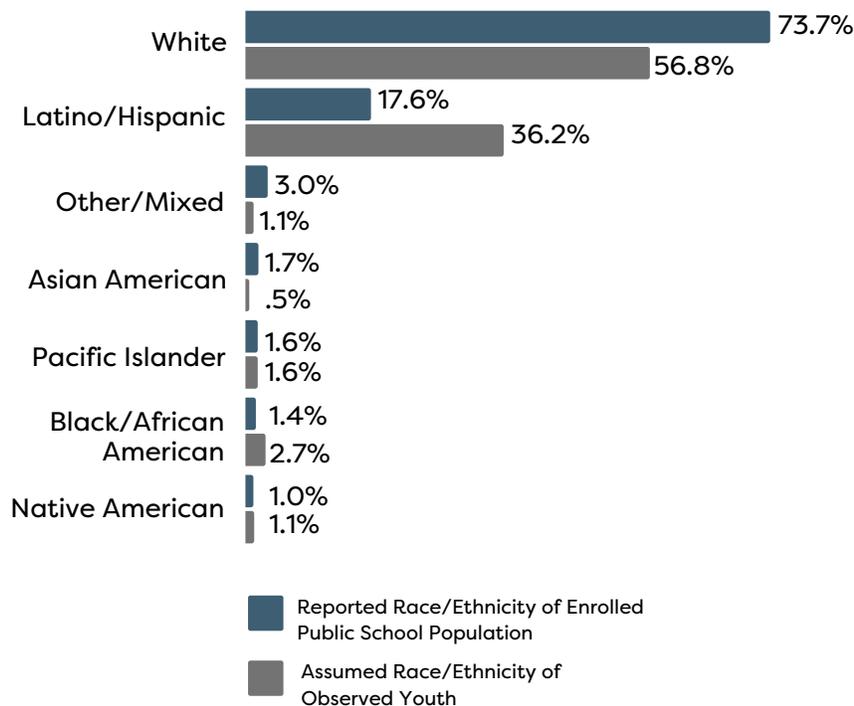
Observed youth who appeared to be Pacific Islander (1.6%) and Native American (1.1%) or “other” (1.1%) compared proportionally to their representation among public school students (1.6% for Pacific Islander students, 1.0% for Native American students).

The disproportionate representation of white children and children of color in hearings we observed reflects general trends in Utah’s juvenile justice system. Approximately 57.7% of new intakes to the system are white children, while 42.3% are children of color. [13]

FIGURE 17. Breakdown of Youth in Observed Hearing by Assumed Race/Ethnicity (Table) [12]

Race/Ethnicity	Enrolled Public School Population	Youth in Observed Hearings
White	73.7%	56.8%
Latino/Hispanic	17.6%	36.20%
Other/Mixed Race	3.0%	1.10%
Asian American	1.7%	0.5%
Pacific Islander	1.6%	1.60%
Black/African American	1.4%	2.70%
Native American	1.0%	1.10%
Total	100%	100%

FIGURE 18. Comparison of Race/Ethnicity of Enrolled Public School Population to Assumed Race/Ethnicity of Youth in Observed Hearings (Graph) [14]





The most I empathized with a youth I was observing in court was when a child was attempting to make a plea regarding their involvement in a fight at school. The youth was relatively young, around 12 or 13, and Latino.

He seemed very willing to admit to his involvement. He told the judge that he was a part of a group of students who were watching two girls fighting. A teacher got involved and, attempting to break up the fight, elbowed one girl in the nose. Her nose began to bleed. That's when things got out of hand in the hallway. It sounded as though everyone there at the time ignored the teacher's orders to disperse after that.

The judge wanted the child to admit to playing a part in the fight. The child maintained that while he was there, he wasn't involved in the actual fight. He clearly didn't want to admit to anything he didn't actually do, so there was much back and forth during his attempted plea. After a conversation with his defense attorney (in the virtual lobby), he came back and admitted to "being involved in the crowd."

It was difficult for me to watch. This young person, who seemed willing to be honest about his actions, was facing disorderly conduct charges for being a student, in a crowd, in a hallway, watching a fight along with everyone else, and becoming upset when he saw a teacher give a student a bloody nose. I could see myself or anyone I know in a position like that.

I had to wonder if anyone else in that crowd of students was facing charges, and especially if any white students were in the same position as this young person of color.

I can't help but worry that this one situation has potentially put a young person on a path towards distrust of, and disrespect towards, authority. I wonder if this would contribute to disengagement from his educational experience, and increased interaction with the system. This might seem overdramatic, but young people are impressionable and they are also very good at inferring meaning from their interactions with adults and authority figures.

It may very well be that this kid has taken away the understanding that adults don't actually care to hear the truth, that they just want to hear what they need to hear in order to move on.

Katie Van Sleen, Court Observer

Defense Counsel Attendance

The most relevant information recorded in our observations involved the presence of defense counsel at each hearing, and whether children were waiving their right to a defense attorney.

We observed that a defense attorney was present in 239, or 95.2%, of all observed hearings (See Figure 19). In just nine hearings (3.6%), there was no defense attorney present. In three cases, the observer had insufficient information to determine whether a defense attorney

was present. For example, an observer might have arrived late and the hearing quickly rescheduled, with no time to note who was involved in the online hearing before the WebEx meeting was ended by the clerk).

This is a very positive improvement from the hearings we observed in 2018, where children (statewide) appeared without defense counsel about 33% of the time (See Figure 20).

FIGURE 19. Defense Attorney attendance at observed hearings statewide

Defense Atty Present	# of Hearings	% of Hearings
Yes	239	95.2%
No	9	3.6%
Unclear	3	1.2%
Total	251	100%

FIGURE 20. Comparison of Defense Attorney attendance at observed hearings statewide in 2020 to same in 2018 [15]

Defense Atty Present? (Statewide)	2020	2018
Yes	95.2%	67%
No	3.6%	33%
Unclear	1.2%	0%



FIGURE 21. Defense Attorney attendance at observed hearings by Judicial District

Judicial District	Yes	No	Unclear	DefCo Present
District 1	9	1	0	90.0%
District 2	32	2	1	91.4%
District 3	78	0	2	97.5%
District 4	40	2	0	95.2%
District 5	43	1	0	97.7%
District 6	18	3	0	85.7%
District 7	9	0	0	100.0%
District 8	9	0	0	100.0%

We were able to determine that of the nine instances in which a defense attorney clearly was not present in a hearing,

- three of those hearings occurred on the same day, in the same courtroom, due to a scheduling conflict in the calendar of a single public defender;
- one hearing was immediately rescheduled for a time and date that ensured the defense attorney could be present with their client; and
- one hearing involved an adult seeking an expungement of their juvenile record (a legal action that does not entitle an individual to representation).

The other four instances of defense attorney absences were unexplained. In those hearings, however, it was clear that each of the youth appearing in court did indeed have legal counsel; the attorney simply was not present at that time.

Due to the low incidence of absent defense attorneys and small sample sizes in rural districts, we were not able to infer any trends across judicial districts. However, we have included disaggregated information for judicial districts here, in case these data are useful for court administrators and other public servants (See Figure 21).

Note that the three absences that occurred due to one day of scheduling conflicts for a single public defender occurred in district six, resulting in the lowest proportion of defense counsel appearance among all eight districts (85.7%). All other districts saw between 90% and 100% of observed hearings attended by a defense attorney.

By contrast, in five out of eight judicial districts in 2018, the rate of defense attorney appearance was at or below 60% (Figure 22). The best rate of defense attorney appearance among judicial districts in 2018 (87.5% in the eighth district) is only slightly better than the worst rate among districts in 2020 (85.7% in the fifth district).

Waiver of Right to Defense Counsel

A closer look at the waiver of counsel issue shows that, in fact, children appearing in delinquency court in 2020 chose to retain legal counsel very close to 100% of the time (See Figure 23).

In 250 observed hearings (99.6%), it was obvious that the child was represented by a defense attorney, whether the attorney was physically present or not.

In one hearing, we observed a youth who had been assigned a public defender but who was unsure as to whether they wanted to be represented by that attorney. In this case, the youth did not decide during the course of the hearing whether they would consent to the representation.

FIGURE 22. Comparison of Defense Attorney attendance at observed hearings by judicial district in 2020 to same in 2018, statewide [16]

Judicial District	2020	2018
District 1	90.0%	60.0%
District 2	91.4%	74.1%
District 3	97.5%	73.3%
District 4	95.2%	50.0%
District 5	97.7%	58.3%
District 6	85.7%	58.3%
District 7	100.0%	54.5%
District 8	100.0%	87.5%

FIGURE 23. Instances of youth waiving their right to counsel in observed hearings

Right to Counsel	# of Hearings	% of Hearings
Not Waived	250	99.60%
Waived	0	0.00%
Unclear	1	.40%
Total	251	100%

Defense Counsel Type

We reported in 2019 that youth appearing in delinquency court were most often represented by a public defender, rather than a privately-paid attorney. This trend was repeated in the hearings we attended in 2020 (See Figure 24).

In 215 out of 251 hearings, we were able to determine the type of defense attorney representing the youth. Of these 215 instances, the youth was represented by a public defender 95.4% of the time.

In only ten instances (4.7%) did we observe a young person appear with a private defense attorney.

In some counties, particularly in rural areas of the state, it can be very difficult to ascertain whether an attorney is appearing as a public defender or as a private defense attorney.

It is not uncommon for contract public defenders in many counties (urban, suburban and rural) to accept private clients, in addition to their public defender caseload.

In very few cases did we observe a defense attorney explicitly clarify whether they were appearing in a public or private capacity on behalf of a particular client.

FIGURE 24. Type of defense counsel in observed hearings where defense counsel was present (239 of 251 hearings)

Defense Atty Type	# of Hearings	% of Hearings
Public Defender	205	85.8%
Private Counsel	10	4.2%
Unclear	24	10.0%
Total	239	100%

Prosecutor Attendance

In our 2019 report, we noted that it was slightly more common for youth to appear in a delinquency hearing where a prosecuting attorney was present (68.4% of the time), than where there was a defense attorney present (67%) (See Figure 25).

This scenario can be problematic as very few youth would have the knowledge or confidence to effectively negotiate with, or even question the assertions of, a legally-trained and experienced prosecutor.

This has changed since 2018. We found that prosecuting attorneys were slightly less likely to attend hearings than were defense attorneys (93.2% of the time vs. 95.2%) (See Figures 25 and 19).

FIGURE 25. Prosecuting Attorney attendance at observed hearings statewide in 2020 to same in 2018 [17]

Prosecutor Present	2020	2018
Yes	93.2%	68.4%
No	5.6%	31.6%
Unclear	1.2%	0.0%



The most common scenario we observed was a hearing where both defense and prosecuting attorneys present (88.8% of the time) (See Figure 26). It was slightly more likely that a defense attorney would be

present, but not a prosecutor (3.6% of observed hearings), than for a prosecutor to be present but not a defense attorney (5.2% of observed hearings).

FIGURE 26. Instance of various attorney attendance scenarios in observed hearings

Scenarios	# of Hearings	% of Hearings
+PRO/-DEF	9	3.6%
-PRO/+DEF	13	5.2%
+PRO/+DEF	223	88.8%
-PRO/-DEF	0	0.0%
+PRO/?DEF	2	0.8%
?PRO/+DEF	3	1.2%
-PRO/?DEF	1	0.4%
?PRO/-DEF	0	0.00%
Total	251	

KEY

- PRO: Prosecuting Attorney
- DEF: Defense Attorney
- + Attorney was present
- Attorney not present
- ? Unclear whether Attorney was present

I have to applaud the many wonderful attorneys, case workers, probation officers and parents that love our youth here in Utah. I saw many adults respectfully and successfully advocate for these children and love them. It makes all the difference in the world.

The system is not perfect and needs improvement, but these adults deserve a shoutout.

-Liliana Bolanos, Court Observer

KEY FINDINGS

1 *Overwhelmingly, young people appearing in juvenile delinquency hearings did not waive their right to be represented by an attorney.*

We are pleased to report that passage and implementation of SB32 appears to have had the desired impact in this regard. In more than 99% of observed hearings, it was clear that the young person had secured legal counsel (even in those hearings where defense counsel was not present with the young person).

We believe that by creating a statutory presumption of indigency, this law removed a major barrier to young people fully realizing their right to legal counsel in delinquency proceedings.

In 2018, we observed that youth waived their right to counsel for a variety of reasons: a wish to move the legal process along as quickly as possible; the influence of parents who feared an eventual financial impact; concerns that having an attorney somehow diminished their apparent willingness to take accountability for their actions; and a lack of understanding of the importance of a vigorous legal defense (with regard to legal negotiations, dispositions and future collateral consequences).

It seems that when juvenile court judges preemptively assign legal counsel to all youth appearing in delinquency court, there is less opportunity for these issues to interfere with youth accessing their right to counsel.

Note: It is unclear the extent to which the convenience of online hearings impacts whether youth will waive their right to legal counsel.

In 2019, we reported that young people appeared to forgo legal counsel in some instances because being assigned a defense attorney would slow down the legal process. This was especially true in rural areas, where in-person hearings could require substantial travel (for both the youth and the attorney) and related scheduling challenges.

In hearings observed for this current report, we did not observe comments by young people, or their parents/guardians, indicating explicit concern that involving a defense attorney would delay the legal process. Occasionally, parents expressed frustration with the length of the legal process, or repetitive delays; however, this frustration was not expressed in connection with a desire to proceed without a defense attorney.

2 Juvenile delinquency hearings rarely proceeded without defense counsel present.

Youth appearing in juvenile court almost never did so without a defense attorney present in some capacity. In more than 95% of all observed court hearings, a defense attorney was present. In fewer than 5% of hearings, proceedings began without a defense attorney present. In several of those cases, the hearing was then immediately rescheduled for a time when defense counsel could be present.

We believe that the very low incidence of unrepresented young people appearing in delinquency court is directly connected to Utah's newly-adopted presumption of youth indigency. Because there is no disruptive process by which a young person must prove that they are poor enough to be assigned a public defender, judges uniformly appoint counsel very early in the legal process.

Unlike in our 2018 observations, in 2020 we almost never observed young people appearing unrepresented at arraignment and detention hearings, which typically occur early in the process. Even when young people (and their families) expressed their intent to hire a private attorney, the judge appointed a public defender to serve until private counsel had been retained.

In addition, we believe that new statutory requirements (in SB32) for public defenders to attend all hearings on behalf of their clients (including review hearings) has positively influenced how rarely young people appear without legal representation in juvenile court proceedings.

We almost never observed young people appearing unrepresented at review hearings. Even when review hearings were short and positive, defense attorneys typically were present.

We did observe hearings in which a young person's progress (in fulfilling court orders) was questioned by the judge or prosecutor, and a defense attorney in attendance was able to negotiate successfully on behalf of their client (interrupting a potential extension of court jurisdiction). This confirmed to us that it is important for defense attorneys to attend review hearings.

Note: It is unclear the extent to which the convenience of online hearings impacts whether a defense attorney will be present at all hearings within the progression of a youth's case.

In the single hearing we observed where a young person physically appeared in a juvenile courtroom, that young person was accompanied by their defense attorney (a public defender), also in person.

We did not observe defense attorneys commenting on the ease of attending hearings remotely rather than in person. Neither did we observe judges or prosecutors remarking on whether defense attorneys were more likely to be in attendance due to the online environment.

We received one unsolicited report from a private defense attorney, representing clients in several judicial districts, who expressed concern that they had observed (pre-COVID) a public defender chatting with a colleague outside a courtroom in which their client was attending a review hearing (presumably without that same public defender attorney by their side).

We also heard from some judges and attorneys who speculated that attendance by defense counsel will drop as courts transition back to in person hearings.



3 *The vast majority of youth appearing in juvenile delinquency court were represented by a public defender.*

This has remained unchanged since our 2019 report. In fewer than 5% of all observed hearings, the young person had retained private counsel. In all other instances, the young person appeared to have accepted the public defender appointed by the court.

We did observe a few hearings in which the public defender on a particular case had been replaced or dismissed, either by the judge (at the public defender's request) or by the youth or their parent/guardian. In one hearing, we observed a public defender requesting to be released from the case; that request was denied by the judge. The judge noted that consistency of representation was in the best interest of the youth.

Note: We anticipated that, given the undeniable intersection between socioeconomic status and race/ethnicity in our country and our state, most cases in which private counsel had been retained would involve a white client. However, in three of the ten instances in which private counsel was hired, the client appeared to be Latino/Hispanic. In one case, the race/ethnicity of the youth was not apparent or stated. The other youth with private counsel were white.

In the 30 cases where we were not sure whether the defense attorney present was a public or private juvenile defender, we observed a similar mix of race/ethnicity. At least 14 of those cases involved a youth who appeared to be white, and at least eight involved a youth who appeared to be Latino/Hispanic. In the remaining cases, the race/ethnicity of the youth was not apparent or stated.

4 *While Utah's juvenile court judges rarely needed to explain the right to counsel to youth appearing in their (virtual) courtrooms, they regularly reviewed other key rights afforded to those young people.*

Due to the major changes in policy with regard to appointment of defense counsel described above, we almost never observed a juvenile court judge explain to a young person their right to a defense attorney.

Utah juvenile court judges appear to appoint counsel early in the legal process; youth almost always accept that appointment. In a few cases, a young person appeared in court having already secured private legal counsel. Hence, we almost never observed a juvenile court judge explain to a young person their right to a defense attorney, because one was already in place.

In only one hearing, we observed a young woman who appeared undecided as to whether she wanted to be represented by the public defender who had been assigned to her. The youth did not explicitly say that she would waive her right to an attorney during this hearing; the judge clarified that her attorney was appointed for her.

During various proceedings, judges sometimes double-checked with the youth that they had had enough time to talk with their defense attorney before making a decision (such as, to accept a negotiated plea deal, or to admit to a particular charge). At least once, a judge asked whether the child would like to pause the proceeding and speak more with their attorney in private before moving forward.



We often observed juvenile court judges explaining, sometimes in detail and with examples, other key rights that children are afforded in delinquency court, such as the right to a trial and the right not to incriminate themselves.

The manner in which judges advised youth of these and other rights varied across the state. This mirrors what we found in our 2019 report, where we discussed how judges’ explanation of the right to counsel varied widely from county to county, and even between judges in the same county.

Several judges appeared to read a recitation of rights - particularly during adjudication proceedings - directly from a document in a pro forma manner, ensuring that every child who appeared in their courtroom heard the same description of their rights. Of these judges, some read all the distinct rights together, then asked the youth at the end whether they understood all those rights. Others went through the rights one by one, checking each time whether the youth understood that specific right.

Others used a more conversational approach, and included some explanation and insight along with the description of the rights (such as comparisons to more commonplace situations a youth might have experienced outside of the court setting). In these cases, the descriptions of the youth’s rights seemed more understandable and accessible to the child and their family; the intent of the judge to ensure that the youth truly understood came across as more sincere.

5 *Defense attorney attendance at hearings does not necessarily translate into quality legal counsel for young people.*

No members of our court observation team were attorneys, much less experts in juvenile delinquency defense. We were not qualified to make judgements regarding the quality of the legal counsel provided in the hearings we observed.

That said, many observers made notes about the juvenile defenders who appeared in these hearings. Some notes indicate that while having defense counsel present on their behalf was better than having no attorney present, these children could have been afforded more vigorous legal advocacy.

For example, juvenile defense attorneys were sometimes observed to say little more than a few words (such as “no objection, your honor” or “the defense stipulates”) throughout an entire hearing. Some defense attorneys appeared “tuned out” or even confused about what case they were discussing.

Not all defense attorneys had ever spoken to their client before the hearing; sometimes, the defense attorney didn’t have a correct phone number or other way to reach the youth or their family.

6 *Additional findings*

While the primary focus of this report is whether young people are represented by defense counsel in delinquency proceedings, we observed other interesting issues created by the unique circumstances of COVID-19. We share these findings in Appendix C, as they help to support ongoing improvement in Utah’s juvenile courts.

Having virtual court hearings included lots of technical issues. Anything from a mic not working to a poor internet connection that would prevent proper communication. This could have been related to family wealth.
-Liliana Bolanos, Court Observer

RECOMMENDATIONS



FOR POLICY MAKERS

Conduct an official assessment of the quality of defense counsel currently afforded to Utah children appearing in juvenile delinquency court.

It is important that a follow-up to this report be conducted in another two to three years.

By that time, hopefully, our public health crisis will have resolved sufficiently to allow court observations to be conducted both in person and online.

Court observations in such an environment will help to answer some questions that this report could not, such as whether juvenile defense attorneys will attend 95% or more of hearings without the convenience of an online option.

We strongly recommend that this next phase of research include an assessment of how well children are being defended by counsel (particularly, court-appointed public juvenile defenders).

Such an assessment should be conducted by an independent non-profit organization with expertise in quality of counsel issues, particularly as pertains to the juvenile justice system. Observations should be conducted by observers who are prepared to make informed judgements about quality of counsel.

Possible partners for the state of Utah in this endeavor include the National Juvenile Defender Center [18] and the Sixth Amendment Center. [19] The latter was responsible for a 2015 report on Utah's indigent defense system as pertains to adult defendants. [20]

We recommend that such an effort be funded through legislative appropriation and coordinated by the Utah Indigent Defense Commission, in partnership with the Utah Judicial Council and the Utah Board of Juvenile Court Judges.

I witnessed a hearing where the attorney hadn't "had time" to review the case and asked that the hearing be rescheduled, after having had the case assigned to them for weeks.

It seemed very disrespectful and unacceptable. Everyone else was present and ready for the hearing.

Liliana Bolanos, Court Observer



FOR THE COURTS

Carefully consider how to best incorporate online hearings into the court's functions going forward, regardless of public health emergencies.

As outlined in Appendix C, we found that while there were challenges with online hearings, there were also benefits. Most importantly, online hearings offer convenience for community and family members who wish to be engaged in juvenile court proceedings.

Online hearings can also greatly reduce travel time for attorneys in rural areas, where public defender contracts are structured in such a way as to place great strain on participating attorneys with high, and even moderate, caseloads.

We recommend that the regular use of online hearings be considered in rural counties, in particular. The time saved by avoiding travel for hearings may offer a significant incentive for attorneys, family members, victims and even the youth themselves to appear.

We also see great benefit in the use of online hearings in situations requiring language translation; remote participation can increase the likelihood of the availability of a certified court interpreter.

Online hearings reduce the need for parents, other family members and victims to take time away from work (usually unpaid). This arrangement also eases childcare pressures.

Youth can attend hearings with less interruption to their therapeutic interventions, educational commitments and work obligations. With a technological boundary in place, some youth may experience less anxiety and stress related to their hearings, allowing them to better engage in the process.

We understand that there are many legal reasons that weigh against extensive use of online hearings in place of in-person proceedings [21]. There are also practical issues that arise, in addition to issues of technological access and quality, such as the level of professionalism and protocol potentially lost in an online environment.

There are also important concerns related to the emotional needs of youth who participate in hearings where difficult statements (such as admissions to serious misconduct) are made, and where major changes to circumstances (such as removal to detention) may be ordered.

That said, the convenience of online hearings has real impacts for court participation, as well as potential implications for quality of public defense in areas of the state where less travel time may result in more active engagement on a client's case.

We encourage the courts to develop an internal process to examine the experiences and lessons of the past sixteen months, for the purpose of considering in which situations online hearings may be a useful, necessary or sufficient substitute for in-person hearings.

The courts currently have sufficient technology in place to continue online hearings, and stakeholders are acclimated to the environment. Reverting back to pre-pandemic practices without capitalizing on these realities would represent a serious loss of opportunity for improvement.



As the courts determine how to best translate the momentum of the past months of online activity into ongoing practice, we strongly recommend that they consider the following requirements when online hearings are used:

Simple but clearly stated protocol for participants.

The convenience of online hearings has the potential to obscure the serious nature of those hearings, where decisions about potential losses of freedom are discussed. Every judge, as well as defense counsel, should convey to participants reasonable requirements for participation in an online hearing.

These requirements should be accessible and inclusive, with the express purpose of ensuring that youth and their families are aware of the gravity of the decisions to be made by a judge at these hearings. For example, a judge might require that participants be sitting up and wearing clothes when on camera, and not in public or in transit when calling in.

Assistance for youth and families without access to appropriate technology.

Courts and defense counsel should be prepared to offer youth options for borrowing or utilizing devices in order to attend hearings remotely if that is best for the child and their family.

Ongoing training and technical support for judges, prosecutors and defense attorneys appearing in juvenile court.

Courts should ensure that court professionals are trained on the technology used for remote hearings, and require that basic proficiency be demonstrated.

Defense counsel should consider that lack of training and proficiency with online platforms may seriously compromise the representation they are able to afford their clients in online court. It is unacceptable for defense attorneys to remain unpracticed in online legal interactions, if such interactions constitute a major avenue for the practice of their profession.

We also recommend adoption of “Best Practices” for online hearings, including such basic tips as: having everyone in the courtroom identify themselves by name and role; reminding community participants about “courtroom” protocol and expectations for online hearings (as mentioned above); and responding to a youth’s unexcused or abrupt exit from a hearing.

The use of individual WebEx links for individual court proceedings.

This avoids unnecessary confusion for youth and families, and protects their privacy by eliminating overlapping proceedings.

Conduct an assessment of how well court translation services are functioning, from the perspective of translators and non-English-speaking court attendees.

We observed sufficient issues to believe that there is room for improvement in this area. However, we recommend that translators and those who rely on them be surveyed first, to determine to what extent attention is warranted. We also believe that judges and defense counsel will have helpful input to structure such an effort.

Court interpreters in Utah must meet multiple training and certification standards, as well as adhere to a code of professional responsibility. We hope that this training has been supplemented with pandemic-specific professional development related to providing translation during an online hearing.



It was clear to me that the youth I observed are not bad kids. Mostly they are just kids who either have strayed onto the wrong path, had a rough life, or gotten into negative friendships. It was easy to sense that they were just broken.

Yes, they have to face the consequences of their actions, but if they had a different social status or a better home situation, things could have been very different.

-Estefania De Lucas, Court Observer

It is only appropriate that judges, court clerks, defense attorneys and prosecutors also receive training or education on how to best conduct court proceedings that involve translation. Court professionals would do well to adhere to a set of basic “Best Practices” to observe in hearings where translation is required (for example, pause after just one or two sentences to allow for translation).

Provide ongoing professional development for judges seeking to better engage and motivate youth appearing in their courtrooms.

Many of Utah’s juvenile court judges seem to embrace the notion that the bench can play an important role in offering support, motivation and opportunities for accountability to the youth who appear before them. When a child is behaving and progressing as everyone hopes they would, there is a spirit of problem-solving and cooperation in the courtroom.

Tension can occur when a youth acts or communicates in a way that is perceived as disrespectful or obstinate. When a judge is provoked and reacts in kind, the situation can become inflamed.

It also appears, unfortunately, that judges sometimes reach conclusions, or make decisions, based on the conduct or attitude that young people display while in their courtroom. When a judge perceives a young person as rude or dismissive, they may be inclined to be more punitive or less understanding of the youth’s challenges.

Nobody is perfect. But when a teenager and an adult professional become involved in a confrontation, it is the responsibility of the adult professional to diffuse the situation, set an example of fairness and ensure that justice is served. It is developmentally appropriate for teenagers to act out. It is not developmentally or professionally appropriate for judges to do so.

We understand that juvenile court judges are already expected to engage in extensive ongoing legal education. However, if judges are going to make a point of connecting with youth to motivate their adherence to court orders, and certainly if they are going to make legal decisions based on youth conduct in their courtroom, they need the appropriate skills and knowledge to do so effectively.

We thus recommend ongoing professional development for juvenile court judges regarding: general youth/adolescent development; interpreting youth behavior and communication; motivational interviewing; and building emotional intelligence.



FOR YOUTH & FAMILIES

Never waive the right to an attorney.

When the judge assigns a public defender to represent a young person appearing in delinquency court, the young person should accept that representation. If they plan to hire a private attorney, that can be done later.

Similarly, if the youth is later unhappy with the public defender who is assigned to them, it is possible to request a different attorney later. But we strongly recommend that no young person proceed with any juvenile delinquency proceeding without having a defense attorney representing them.

Youth can speak up for themselves in court, and can benefit from having family members or adult friends present to support them. But even for very educated people, court processes and legal terms can be extremely intimidating and hard to understand.

The juvenile justice system has a very specific and difficult “language” of its own. Youth and their families need someone to help translate that language for them, to ensure better long-term outcomes of court involvement.

Not having an attorney may seem to young people to save a little time in the short run (for example, they might not have to reschedule a hearing so their attorney can be there). That may be true, in some cases. However, in the long run, it is much better to have someone with legal expertise available to help a young person negotiate the system.

“One thing that stuck out to me was how important a supportive parent or guardian is. I would say it’s often a direct indication of how much improvement the juvenile makes.”

-Tanya Alvarado, Court Observer

Be available to the defense attorney as much as possible.

The moment a judge assigns an attorney to represent a child in delinquency court, that attorney works for that child. It is critical that youth, as much as possible, keep in touch with their defense attorney, to ensure the best possible legal outcomes in the case.

Youth and their families should ensure that their defense attorney has at least one way to get in touch with them on a regular basis, including: a cell phone number or home number; a primary family member’s cell phone; an email address; a primary family member’s email address; or the physical address where the youth and/or their family can be contacted.

Many defense attorneys will be comfortable texting with their juvenile clients. Sometimes, though, they will need to speak with their client on the phone or in person for legal reasons.

A defense attorney may not be comfortable contacting a young person through social media. Not every platform is secure, and they will want to keep any legal information as private and protected as possible. If a young person uses social media to communicate with their attorney, it is best to direct message them (no public posts) with a very short message to let them know how the attorney can reach their client by phone, by email or in person.



If a young person is not in touch with their defense attorney between court hearings, it is unlikely that they will enjoy the best legal outcome possible. A young person may miss out on opportunities to which they are entitled, if they are not actively involved in their case. Youth and their families should make sure that the defense attorney has a way to reach them.

If English is not the first language of a youth, or their parent(s)/guardian(s), they should ask for a court interpreter who can translate for them.

It is hard for most people, even those who speak English fluently, to understand what is going on in a juvenile courtroom. It is almost impossible for people who aren't able to understand or communicate in English.

The court can appoint a court interpreter to translate for a young person and their family at every hearing. The interpreter will be there to translate exactly what is being said, without changing anything.

The interpreter is not allowed to explain what a young person should do, or explain what is going on - that is the job of the defense attorney.

Youth can let their lawyer know that a court interpreter is needed. It is also recommended that youth request translation assistance in advance of a hearing, during meetings with their defense attorney, so that they are fully informed and prepared before appearing in court.

It is not the job of a child appearing in juvenile court to translate for their family members, or vice versa. A court interpreter is a professional who is familiar with legal terms and courtroom protocol. It is best to leave the job of translation to the court interpreter.

If a youth needs more time to think about what is being proposed, or if they want to meet with their lawyer again to get more information, they should request to do so.

Sometimes, it can feel like taking extra time to meet with an attorney will just make a young person's involvement with the court last longer. But it is important that youth involved in juvenile court know what is happening to them, and to have good information about what might happen if they take certain actions.

Even if they are in the middle of a hearing, a young person can let the judge or defense attorney know if they feel confused or have questions that they need to ask. Whether in an online hearing or in a real courtroom, there are ways for the judge to let a young person meet in private with their lawyer.

Even if a young person's defense attorney is busy, it is their legal responsibility to represent that young person to the best of their abilities. It is also their job to do what their client wishes them to do, including going to trial if the youth wishes to prove their innocence that way.

Trials can take a lot of time, and there is no guarantee that a trial will result in an outcome that is beneficial to the client. However, a child does have the right to have a trial if that is what they want.

Youth and their families should take every hearing seriously - and be respectful to the judge.

How a young person acts or speaks to the judge in a hearing can make a difference in what the judge decides. Youth have the right to ask questions, and speak what is on their mind, within reason. However, there can be consequences, depending on how a youth's behavior is interpreted by the judge.



It is extremely important to remember that a juvenile court judge has a great deal of power in relation to the youth appearing in their courtroom. Youth and their families need to give every hearing the gravity and attention it deserves, given the extensive power of the judge and of the courts to affect their lives.

Adult professionals should be able to act fairly and objectively, even when the young people they are working with are being rude or acting badly. Adults, even judges, are only human, though.

If a young person participating in a court hearing ignores the judge, refuses to answer their questions, or acts in a way that feels disrespectful to the judge, there can be real and immediate impacts. The youth may end up not getting some community service hours forgiven, or they could be ordered to participate in a class that will take a lot of time and work to complete.

When a young person appearing in court has a question like, “Do I need to answer the judge’s question?” or “Can she force me to do that?” it might be best to ask their defense lawyer privately for an answer, rather than asking the judge directly.

Even when the judge is kind or supportive of a youth’s progress, that judge always has the authority to revoke privileges, send a child to detention, or otherwise seriously impact their life circumstances. Being confrontational with a juvenile court judge could result in poor outcomes for that young person.

The legal process is extremely confusing. I struggled to understand what was going on at first, even though I have a masters degree and a dedicated interest in learning more about the process. Young people, and especially young people of color and youth with indigent families, do not have the resources to navigate this complex system.

The consequences of a missed court date, an outburst in the courtroom, or a misunderstanding of how to follow through with court orders could be life-altering for a young person in an already precarious position. These young people need the protection of someone knowledgeable and dedicated to protect them.

Katie Van Sleen, Court Observer

APPENDIX A

Court Observation Team

We are proud and appreciative of our observation team. Court observers for this project came from a variety of different cultural and socioeconomic backgrounds, with a wide range of educational accomplishments and professional experience.

NAME	RESIDENCE	RACE/ ETHNICITY	BILINGUAL (SPANISH)	GENDER IDENTITY	EDUCATION	PROFESSIONAL POSITION
Abigail Piña	Provo	Latina	Yes	Female	Undergraduate (Behavioral Science)	Advocacy Fellow
Addison Trupp	Logan	White	No	Male	Undergraduate in Progress (Pre-Law)	Full-Time Student/Athlete
Alyssa Dairsow	SLC	Black	No	Female	Undergraduate (Exercise/Sports Science)	State Government Committee Coordinator
Ana Jenny Fernandez	SLC	Latina	Yes	Female	Undergraduate in Progress (Pre-Law)	Student Office Assistant
Anna Thomas	SLC	White	No	Female	Graduate (Public Administration)	Policy Analyst
Ciriac Alvarez Valle	SLC	Latina	Yes	Female	Undergraduate (Political Science)	Policy Analyst
Estefania De Lucas	West Jordan	Latina	Yes	Female	Associates (General Studies)	Accounting Clerk
Katie Van Sleen	SLC	White	No	Female	Graduate (Education, Sociology)	Student/Graduate Teaching Assistant
Liliana Bolanos	Eagle Mountain	Latina	Yes	Female	Undergraduate In Progress (Child/Family Advocacy)	Policy Intern
Lorena Cardenas	SLC	Latina	Yes	Female	Associate (Paralegal Studies)	Legal Assistant
Martín Muñoz	Taylorsville	Latino	Yes	Male	Graduate (Public Administration)	Policy Fellow
Sydni Makemo	St. George	White	No	Female	Undergraduate	Advocacy Outreach Coordinator
Tanya Alarado	SLC	Latina	Yes	Female	Undergraduate (Social Work)	Social Work Caseworker

All our observers agreed to be identified and credited for their participation and contributions. In addition, several members of the team completed “reflection” questionnaires when their roles concluded. Here are selected quotes from their reflections.

ANA JENNY FERNANDEZ

- *It is crucial that young people have someone to help them at every step of their court involvement. As young adults entering the criminal justice system, or some even as children, it is important to have an experienced professional advocating for your best interest, as well as explaining this unfamiliar process to you.*
- *Having a juvenile defender is important even when the juvenile knew they were breaking the law. It is always super helpful when a judge ensures that: court does not begin until the juvenile has counsel; that they have had enough time to talk things over with their attorney; and the juvenile is advised of all their rights.*
- *As an aspiring juvenile defender, I personally believe that youth are our future. That being said, young people are bound to make mistakes, and I think it is important to learn from them. A mistake should not have to dictate a young person’s life forever. They can, however, have consequences that ultimately will lead them to repent, make amends, change behavior, give them skills and responsibilities to learn and grow.*
- *Having a juvenile defender represent you is important. It will give you the best fighting chance in the system, it can offer support and guidance. Especially because not everyone will need to be placed in juvenile detention; treatment or home arrest might be more adequate. Sometimes all that is needed is probation, community service hours, and payment of restitution or fines. My point is, you want someone to represent you and your best interests and to advocate for what you want.*

You want to be able to come up with a solution for the juvenile and the state, and see whether a deal can be made to decrease the charges, lower the degree counts or expunge a record.

- *I think my biggest takeaway from this experience was watching the juveniles take ownership of their actions. I would say that 90% of the juveniles I observed in court were doing well in school, paying their restitution and fines, completing community service hours, and basically doing everything they needed to. Comments from their guardians and treatment providers - even their probation officers - were good reports, saying that the youth had an attitude adjustment and were using the skills they learned to make better decisions. I loved seeing that sense of accountability and growth.*

TANYA ALVARADO

- *Court involvement is a very complicated process. It can be easily overwhelming and can add to the anxiety, stress and sometimes trauma of the experience of the youth involved. Trauma creates more problems down the road.*
- *To have a good defense attorney makes all the difference for some of these kids. If they have a private attorney, their charges almost always get dropped or are changed to lesser misdemeanors, which in return grants the juvenile a more smooth transition back to stability or normalcy in their life. Youth stability and support from others is key to thriving development.*
- *One thing that stuck out to me was how important a supporting parent or guardian is. I would say it’s often a direct indication of how much improvement the juvenile makes.*

- One of the first cases I observed was a young kid, maybe 13 or 14 years old. His charges were pretty serious. When they told him he couldn't go back to home detention, that he had to stay institutionalized, he broke down in sobbing tears. I was reminded that these are kids! They are new to independence and they need support, or else they are lost. They are mostly well composed and act like they are okay, but a lot of them start to cry when they are not released. It's heartbreaking because they are so young. They don't know what they are doing sometimes. They just get caught up with a bad crowd or don't know how to cope with the issues at home. It might be redundant to emphasize, but juvenile court is juveniles in court!
- Hiring a private attorney is a privilege because from what I observed, they have more time to look over your case and explain to the youth what the process will be like. In many cases where the youth used a public defender, the public defender and the juvenile hadn't had a chance to speak before the hearing. The juvenile in return seemed more unsure and not as confident in the direction that the trial was going. Those families who are able to hire private attorneys seem more at ease and know what is going to happen than those who cannot and many people of color cannot afford private attorneys.
- If we adults remember being that age, we can gain a lot of empathy for them. They are still developing into their own person and that is a hard time in life.
- I can always relate to the youth of color and when their parents don't speak English. If it wasn't hard enough to come to terms with their child being badly involved with the law, it is extremely difficult to advocate for the needs of their children when there is a language barrier. Navigating a system you barely understand is paralyzing. I remembered my mother being so worried about my brothers when they were younger.
- The amount of grief it causes is tripled when your child is undocumented and you cannot advocate for them because you simply don't speak the language. I observed some of those cases and I saw my mother in those other mothers.
- The language barrier is a massive disadvantage. There was one case I observed where the translator was present, and although it was better to have a translator than no translator, it does slow down the process. And of course the parent is worried about understanding everything that is going on in the courtroom.
- I am unsure if judges take many courses and come to study youth well before becoming juvenile court judges but based on my observations, when the judge showed compassion and tried to level with the youth, that is when the youth was most responsive. When the judge said things like "You're smart and I know you can be better in the future" or "I look forward to our hearings because I know you're trying your hardest to improve." That is when I saw the youth engaging. It seems they absorb that feedback and want to live up to the judges expectations. When the judges are slightly more intimidating or don't take anytime to offer kind advice, the youth appears more rushed and eager for it to be over. I think it's better if judges are compassionate towards the youth and genuinely want to see them happy and successful. I feel that the youth can pick up on when a judge isn't looking to punish them for the sake of punishment but wants them to take a break and reflect on why they need to change their circumstances.

LILIANA BOLANOS

- *Something very sad but important to note is that sometimes young people don't have a parent that is capable of helping or loving them. This has been a common theme in many court hearings I have observed. Parents will often blame themselves for not being there for their children or not having a good relationship with them. It causes distrust between a youth and the adults in their lives. I've witnessed a defense attorney or probation officer become that parental figure they need. I see how the mutual respect and trust between the advocate and the youth makes such a difference in their overall behavior and progress.*
 - *A lot of youth simply don't understand the process or the laws. It's important to have someone that sets aside the time and has the patience to explain things to them clearly. Understanding can really impact a youth.*
 - *Parents often gave very emotional requests for their children in court. Sometimes this meant a parent would encourage the judge to give the child a harsher sentence and sometimes even a lighter sentence. The attorney was always about to provide well-thought out and non-emotional insight that helped everyone involved understand the youth and their situation.*
 - *Having virtual court hearings included lots of technical issues. Anything from a mic not working to a poor internet connection that would prevent proper communication. This could have been related to family wealth.*
 - *Parents often gave very emotional requests for their children in court. Sometimes this meant a parent would encourage the judge to give the child a harsher sentence and sometimes even a lighter sentence. The attorney was always about to provide well-thought out and non-emotional insight that helped everyone involved understand the youth and their situation.*
- *Having virtual court hearings included lots of technical issues. Anything from a mic not working to a poor internet connection that would prevent proper communication. This could have been related to family wealth.*
 - *Money seemed to play a big role in determining what programs to put a child in. Lots of families didn't have enough money to put their child in a good program. I will never forget that a mother took out a \$200 loan from a bank to pay for her sons program.*
 - *My very first court hearing there was a young man who was progressing really well. He was respecting the probation rules, discontinued the behavior that initially got him into trouble and was very respectful of all the adults involved. His progress was very exciting to everyone. At the beginning of the hearing the judge noticed the parents were not present. When asked where his parents were the young adult responded, "My dad was deported a few days ago." When asked who his legal guardian is now he mentioned his care takers were now his 18 year old brother and grandmother. Although my parents have never been deported, I grew up as an immigrant child. This was one of my worst fears. I remember being young and planning with my parents what would happen if they were ever deported. It was scary and seemed so unfair. I remember asking my friends at school if it was a fear they had. Being U.S. citizens and only being in second grade my friends told me they didn't know what deportation was. My heart went out to this youth and I thought about the challenges he could be facing and how this would affect his progress.*

KATIE VAN SLEEN

- *The legal process is extremely confusing (by design, it seems), and I struggled to understand what was going on - even as someone with a masters degree and a dedicated interest in learning more about the process from multiple fronts. Young people, and especially young people of color and with indigent families, do not have the resources to navigate this extremely complex system. And they can suffer all the more for their lack of understanding of what's going on.*
- *I witnessed a hearing where the attorney hadn't "had time" to review the case and asked that the hearing be rescheduled after having the case assigned to them for weeks. It's very disrespectful and unacceptable. Everyone else was present and ready for the hearing.*
- *I do have to applaud the many wonderful attorneys, case workers, probation officers and parents that love our youth here in Utah. I saw many adults respectfully and successfully advocate for these children and love them and it makes all the difference in the world. You can just tell, sitting in on a hearing, when an adult truly and sincerely cares about the progress and overall development of the young adult and it has touched my heart many times. The system is not perfect and needs improvement but these adults are worth giving a shout out to.*
- *The consequences of a missed court date, a misspeak in the courtroom, or a misunderstanding of how to follow through with court orders could be life-altering for a young person in an already precarious position. These young people need the protection of someone knowledgeable and dedicated to protect them.*
- *The most I empathized with a youth I was observing in court was when a child was attempting to make a plea regarding their*

involvement in a fight at school. The youth was relatively young, around 12 or 13, and Latino. He seemed very willing to admit to his involvement, telling the judge that he was a part of the group watching two girls fighting when a teacher involved himself and, attempting to tear apart the girls, elbowed one in the nose which started bleeding. That's when things got out of hand in the hallway, and it seems everyone in the hallway at the time ignored orders to disperse.

The judge wanted the child to admit his role in the fight, but the child maintained that while he was there, he wasn't involved in the actual fight. He clearly didn't want to admit to anything he didn't actually do, so there was much back and forth during his plea. After a conversation with his defense attorney (in the virtual lobby), he came back and admitted to "being involved in the crowd." It was difficult for me to watch this young person who seemed willing to be honest about his actions facing disorderly conduct charges for being a student in a crowd in a hallway, watching a fight like everyone else, and seeing a teacher make a student bleed. I could see myself or anyone I know in a position like that.

After all, we've all gone to school and gotten involved in drama that wasn't necessarily ours. I had to wonder if anyone else in the crowd of students was facing charges, and especially if any white students were in the same position as this young person of color. I also couldn't help but compare the teachers' "orders to disperse" and his lack of response to those similar to how police officers treat community members, and I wonder how he will feel the next time he is in a position like this. Will he trust the system to protect him, or will he feel as if it's already unfair stacked against him? Will that affect the way he responds to future orders from authority figures? I can't help but worry that this one instance has set a young person onto a potential path towards distrust of and disrespect towards authority, of disengagement from his educational experience,

of increased interaction with the carceral system. This might seem overdramatic, but young people are impressionable and they are also very good at inferring meaning from their interactions with adults and authority figures. It may very well be that this kid has taken away the understanding that adults don't actually care to hear that truth, that they just want to hear what they want to hear in order to move on.

ADDISON TRUPP

- The process that unfolds in court is often very complex and hard to follow if you are not exactly sure of what is happening. Having a defense attorney present, or someone to guide them through the process, helps the young person to better understand the process. My very first time observing a court proceeding was difficult.
- The process was hard to follow and I did not completely understand the wording or how things were unfolding. Without an attorney, or someone to help the young people understand the process, I imagine that most experience the same problems that I had during my first court observation, and would struggle to understand what is going on.
- Defense attorneys understand what is going on within a court proceeding and are often able to help the juvenile better understand what exactly is going on. Attorneys are also able to argue complex ideas that juveniles would have no idea about. To me, the biggest reason why defense attorneys are important is that they are able to provide context to the young person facing potentially serious punishments. Without an attorney, many kids would have no idea what they are agreeing to or what is going to happen to them.
- There were many instances that I observed that stuck in my mind, but overall the greatest impression was the juveniles' desire to take responsibility for their actions. It stuck with me because it showed a sense of accountability. I also have good impressions of parents trying to help their youth understand what is going on.
- Family members spend a lot of their time making sure that these children are following the rules of probation and the orders from the court. These family members really helped the youth take responsibility for their actions and show accountability by fixing the damage.
- I really empathized with the youth when they were getting charged with their punishments. Although it is appropriate for them to take accountability for their actions, it nonetheless was extremely sad to see these youth having their futures impacted by the mistakes they made. I also really emphasized with some of the parents, who I could tell were heart-broken about what was facing their child.
- One parent was visibly tearing up as the judge announced that the case would be going to trial. Understanding how my mom feels about me, I could imagine the pain this mom was going through. I think the mom, who would probably do anything within her power to take her child's pain away, finally realized that there was nothing she could do to save her child.

- *Wealth has a huge impact on the consequences youth face in the system. If a family is able to pay for a private attorney they are often provided better defense than a public defender is able to give.*

Many public defenders are unable to fully be informed on every case they have, like private defenders are, because of the sheer number of cases they have. In one of the cases I observed the youth was unable to speak to his public defender until the day before his case, and his public defender had been switched sometime between his two hearings without his knowledge. This scenario would most likely not have occurred if he had the money for a private attorney.

- *From my limited knowledge of the problems within the juvenile system the only change that I would make would be the hiring of more public defenders. Public defenders are often not bad lawyers but instead just too swamped with cases that they are unable to physically focus on every single case enough.*

ESTEFANIA DE LUCAS

- *Having a defense attorney is so important in juvenile court, because young people need someone to help them know what they don't know. They need orientation and guidance - which, at times, their parents may not be able to provide because either they are not involved or don't have the knowledge to do so. Youth need someone on their side who has their best interest in mind, and who does not see them as just a problem for the state.*

- *It was clear to me that the youth I observed are not bad kids. Mostly they are just kids who either have strayed onto the wrong path, had a rough life, or gotten into negative friendships. It was easy to sense that they were just broken. Yes, they have to face the consequences of their actions, but if they had a different social status or a better home situation, things could have been very different.*
- *I think the approach of having online hearings was a good one. In particular, I feel it made it much easier for parents to attend and be a part of the proceedings. I'm sure it was much more accessible for them to connect via phone or computer, rather than to have to request time off work.*

ABIGAIL PIÑA

- *After reading (Voices for Utah Children's) 2019 publication "Striving for Equity in Utah's Juvenile Justice System," I remember thinking, "I wonder how many people in my Hispanic community know that this information exists." I had caught myself needing to re-read some of the terminology used and re-analyze some of the statistics. Although the report was meant to inform, the information was not too commonly known to community members outside the policy world, such as myself.*

I took a particular interest in this project because I knew I would be making a difference with the youth and in the report, as I would give my feedback and help to make it more relatable.



As a Hispanic female whose parents immigrated here from Mexico, this allowed me an exceptional opportunity to share my unique perspectives.

- *Simply put, these young individuals need to be aware that a defense attorney is necessary, accessible and has their best intentions in mind. Having an understanding of all the new terminology that is commonly used in the juvenile system is of utmost importance. I observed youth appearing with top-tier private defense attorneys, and those youth seemed to receive less severe sentences.*
- *The individuals who come from wealth and privilege are often treated better than children of color who grew up in a low-income household and community. Spreading accurate information to these youth and their families truly does make a difference when it comes to their right to receive legal representation. There should be no difference between a private or public defense attorney.*
- *I most related with the youth who had their families' support throughout their whole process. But I empathized most with those who did not have the help of the immediate family. Throughout this entire process, I saw how detrimental it can be for youth to acknowledge that they don't have familial support or oversight at home.*

APPENDIX B

Observation Form

Access to Counsel Court Observation Form Questions (2020/21)

Date:

Time:

Observer:

Judicial District:

County:

Judge:

TYPE OF HEARING

1. What type of hearing/proceeding/meeting did you observe? (Check all that occurred within one continuous timeframe for an individual)

- a. Arraignment
- b. Detention Hearing
- c. Pretrial
- d. Trial
- e. Adjudicatory Hearing
- f. Disposition Hearing
- g. Post-Disposition Hearing(Review)
- h. Violation of Probation Hearing
- i. Evidentiary Hearing
- j. Transfer Hearing
- k. Review
- l. Restitution
- m. Plea in Abeyance
- n. Other

2. How long did the hearing/proceeding/meeting last?

- a. 0 to 5 mins
- b. 5 to 14 mins
- c. 15 to 29 mins
- d. 30 to 59 mins
- e. 60+ mins

DEMOGRAPHICS

3. What ethnicity/race did the child appear to be (or stated they were, or were referenced to be)?

- a. White
- b. Latino/Hispanic
- c. Black/African-American
- d. Native American or American Indian
- e. Asian
- f. Pacific Islander
- g. Other
- h. Not apparent or stated

4. How old does the child appear to be (or stated they were, or were referenced to be)?

- a. Under the age of 10
- b. 10 to 12
- c. 13 to 14
- d. 15 to 16
- e. 17 to 18
- f. Over the age of 18
- g. Not apparent or stated

5. Does the child appear to be gender-conforming?

- a. If yes, which?
 - i. Female
 - ii. Male
- b. If no, why does it appear that they are not gender conforming?

REPRESENTATION

6. Was a defense attorney in the courtroom and representing the child?

- a. Yes
- b. No
- c. Unclear

7. If yes, what type of defense attorney was representing the child?

- a. Public Defender
- b. Conflict Counsel
- c. Private Attorney
- d. Legal Clinic
- e. Other
- f. Unclear

8. If no, did the child request or make any suggestion that they would like to be represented by an attorney?

- a. Yes
- b. No
- c. Unclear

9. Was a prosecuting attorney present for the case?

- a. Yes
- b. No
- c. Unclear

10. Was a Guardian Ad Litem (GAL) present on behalf of the child?

- a. Yes
- b. No
- c. Unclear

11. Did you observe the child being advised by the judge of their right to a lawyer at no cost?

- a. Yes
- b. No
- c. Unclear

WAIVER OF COUNSEL

12. Did the child waive their right to counsel?

- a. Yes
- b. No
- c. Unclear

13. If yes, did they first consult with a lawyer?

- a. Yes, a defense attorney
- b. Yes, the prosecuting attorney
- c. Yes, some other attorney
- d. No
- e. Unclear

OTHER THINGS TO CONSIDER FOR YOUR NOTES:

What allegations have been made against the child?

- Any details about the incident(s) discussed in courts.
- Did the child admit to the allegations?
- Any details about the incident that were shared by the child
- Any influence by present family members on the child, to get them to admit to allegations

What sort of updates were given about the child's performance on probation, or in court-ordered programming, etc?

- Who did the judge ask about how the child was doing: the child, the defense attorney or prosecutor, family members who are present, case managers/probation officers, etc?

Does the child, their attorney or others present mention any barriers or challenges facing the child, in terms of participation in court, or ability to complete court orders? For example:

- Is the child not present due to employment or school demands?
- Is the defense attorney unable to appear due to other case obligations?
- Are parents unable to be present due to lack of internet or lack of a telephone?

What were your impressions about how the authorities in the courtroom interacted with the child?

- How did the judge treat the child?
- How did the prosecutor talk about or speak to the child?
- How did the defense attorney appear to get along with, or be in cooperation with, the child?
- What about probation officers, case managers, school administrators who might have been present?

APPENDIX C

Additional Findings

While the primary focus of this report is whether young people are represented by defense counsel in delinquency proceedings, we observed other interesting issues created by the unique circumstances of COVID-19. We share these findings, in addition to our primary findings, in the hopes that they will support ongoing improvement in Utah's juvenile courts.

Online hearings offer several clear advantages that should be balanced against the legal and practical benefits of traditional, in-person hearings. Improvements must be made, though, to incorporate online hearings as a future option.

Online hearings presented clear convenience for participants, including for our court observer team. Court observations conducted in 2018 required extensive travel, which meant a lot of time and financial expense in order to complete our original report. It took our observation team nearly a year to conduct 199 in-person court observations.

By contrast, for this report, our team was able to complete 251 observations in less than four months, with some hearings attended by more than one court observer. We can personally attest to the convenience of online hearings.

We noted that it was not uncommon for parents and other supportive adults to attend hearings on their phone, while on a break from work. With no attendant travel, these working adults clearly had an easier time attending hearings.

Parents, grandparents and other supportive adults often accessed the same hearing from separate phones or computers. In some of these situations, the relationship between parents or other family members did not appear to be very good. As the various parties attended remotely, the incidence of awkward or difficult encounters (which can create stress for the child at the center of the delinquency hearing) was greatly reduced.

We also observed that youth were sometimes able to call in to a hearing - via phone or computer - directly from a community placement (such as a sober living facility or an outdoor therapy program). It seemed that youth were able to attend hearings more easily with less disruption to their court-ordered programming.



Hearing attendance by defense attorneys, prosecutors, probation officers, victims (and/or their representatives), school administrators and others involved in court proceedings also seemed to be improved by the convenience of the online environment.

We assume that the convenience of online hearings is particularly pronounced for participants living in rural areas, given the travel demands in those areas.

Software features in Webex made it possible for defense attorneys to “meet” with their clients in a separate virtual “room” when private conversation was necessary. In addition, we observed that some defense attorneys were able to speak or text via phone with their client while present in a hearing (the virtual equivalent of whispering to one another in a physical courtroom).

Online hearings were not without problems, however. In addition to the many legal issues presented by online hearings (from the constitutional to the practical), [21] we observed the following:

Management of professionalism, protocol and participation seemed to be a challenge in some online courtrooms.

Based on some of the wide-ranging scenarios we observed - from youth lying in bed or appearing shirtless, to a mother and son engaged in a physical altercation - the convenience of online hearings seem to have some negative impacts on how seriously youth and their families take each hearing.

This is important to mention, because how youth conduct and present themselves at hearings can impact determinations a judge will make in those hearings. Developmentally, many youth already struggle to fully comprehend the power a judge can wield over important aspects of their lives.

The physical environment of a courtroom, with the attendant protocol and ceremony, can help to ameliorate this somewhat. The casual environment of a bedroom, car, or front stoop does not necessarily offer the same impression.

We did not observe many judges who, at the outset of a hearing, clearly outline expectations for professionalism or protocol with regards to youth and their families in attendance at hearings.

It was unclear to us, to what extent juvenile defense attorneys made an effort to prepare their clients to present and conduct themselves appropriately during hearings.

While defense attorneys can’t control the behavior of their young clients, it would be irresponsible for them to not impress upon those clients the importance of observing certain formalities in an online environment. There did seem to be a difference in how youth were regarded by judges and prosecutors, depending on how seriously the youth appeared to take the situation (conveyed by manner of dress, call-in location, etc).

Hearings were often delayed or interrupted due to technical issues.

Individuals who might benefit most from the convenience of online hearings were also those most likely to experience technological issues. Youth and families with difficult financial and economic situations (either assumed or stated) often struggled to participate in the online environment, lacking reliable technology and/or necessary bandwidth.

We often observed hearings where the youth and/or their parents or guardians were the last to arrive, having struggled to access the Webex link provided to them. In some cases, youth and/or their family members were not able to connect via Webex at all.



It was not uncommon for us to observe a defense attorney, connected to the Webex hearing via their office computer, call their client on a cell phone, and have their client participate in the hearing in this way.

Some young people who did not appear at their hearing, were described - by either a family member, defense attorney or other government support staff - as not having their own cell phone (relying on a friend or sibling in order to communicate).

In rural areas, as well as in some urban and suburban areas, youth and their families occasionally experienced poor cell reception, leading to dropped calls and interrupted proceedings.

It was unclear to us, to what extent juvenile defense attorneys made an effort to ensure that their clients had the technology necessary to ensure their meaningful involvement in hearings. We did observe that many youth didn't have the necessary technology to guarantee attendance and participation. In only one hearing did we observe a defense attorney and their client connecting to a hearing from the same location (a physical courtroom).

Community members (including youth defendants, youth victims, and family members of each) were most likely to experience technological problems when attempting to access Webex hearings. However, some judges, attorneys and court clerks appeared less than proficient in the use of Webex software and associated hardware. This led to audio difficulties that slowed or interrupted the court proceedings.

Using a single Webex link for a full day of hearings created confusion, and potentially compromised youth and family privacy in sensitive situations.

In most judicial districts, each distinct hearing had its own Webex link. Only individuals who were involved in, or invited to, that case/proceeding were able to access the link and connect to the hearing.

In some county courts, however, the clerk provided only a single link to be used all day, by all hearing participants with a scheduled hearing on that day.

This occasionally resulted in participants from one hearing (for example, a youth and his parents sitting together on a couch) to appear suddenly in the middle of another hearing (for example, while a different youth is admitting to a sexual offense against a younger family member). This obviously created privacy concerns for both young people, as well as their families and, potentially, their victims.

In some cases, several youth and family members were present, via multiple phone and computer accounts, at the start of a hearing. The judge and clerk would have to determine who was at the correct hearing, and who needed to log off and log in at a later time.

Either of these scenarios might have occurred in the lobby or parking lot of a courthouse, or even in a single juvenile courtroom, had the hearing taken place in person. However, it seems appropriate to utilize available technology in such a way as to maximize privacy for youth and their families, rather than perpetuate discomfort that might accidentally occur in a physical setting.

Online-only hearings may interfere with some judges' ability to connect with the youth appearing before them.

Several judges openly commented that they would prefer to be able to interact with the child in person, or, when the child was able to call in only without video, at least see the child's face. This occurred both when the judge wanted to congratulate or otherwise offer praise to the child, and when the judge wanted to admonish or confront the child regarding their fulfillment (or lack thereof) of a court order.

That said, we observed many judges who appeared able to build and maintain rapport with the youth, in spite of the online setting. This was observed both in cases where the child appeared on camera and in cases when the youth attended with an audio connection only.

We suspect that not appearing in person or on video may have provided emotional comfort or boundaries for some young people. In a few awkward cases, parents followed the youth through the home to compel them to appear on camera, despite obvious distress and frustration on the part of the child. Some youth seemed to use control over their visual presence as a way to assert autonomy or protect themselves in some way (i.e. shield themselves from shame or embarrassment, prevent others from seeing them cry, etc).

Juvenile court judges' expertise at interacting with young people - including building rapport, interpreting youth expression and inspiring cooperation - varies widely. Some judges' inability to communicate effectively with young people may seriously limit their capacity to positively influence children appearing in their courtroom.

Observers regularly made mention, in their notes, of judicial interactions with young people, in particular how the manner of the judges' communication seemed to influence the youth's behavior or demeanor.

The vast majority of behaviors seen among different young people, as well as by the same youth in a single hearing, fell within the realm of developmentally appropriate. [22] Adult professionals who work with youth from a variety of cultural and socioeconomic backgrounds can easily anticipate these behaviors.

Our observers witnessed many judges speak calmly and respectfully with young people, regardless of the youth's manner or behavior. This seemed to keep difficult situations from escalating, and occasionally allowed the judge to slowly "soften" the child over the course of a hearing, resulting in at least some interaction with a resistant youth before the hearing was adjourned.

Some judges were observed to have strong rapport with the youth appearing before them. These judges offered positive affirmation for even small improvements, and even incorporated complementary language when confronting youth about their failures to fulfill obligations.

For example, these judges were observed saying things like, "You're such a smart kid, I know you are capable of more than this," and "I'm really happy to see you getting along better with your family, I can see that you are a good brother and want to help your mom."

Other judges were not so effective at drawing out young people, or eliciting their cooperation with court orders.

One judge, when questioned by a defiant young man as to whether he had to respond to her questions about medication and substance use, snapped at him and then immediately accepted the probation officer's recommendations about additional psychological testing and medication compliance.

Another judge continually pressured one young man to appear on camera, despite him holding his hands over his face, clearly frustrated and uncomfortable, and seemingly trying to not burst into tears.

In one hearing, after several minutes of frustrating technical difficulties, a judge brusquely asked a youth why his father wasn't with him. The boy, calling in from the backseat of a car, responded that Immigration and Customs Enforcement (ICE) had recently arrested and deported his father. He was living with his grandmother and working with his 18-year-old brother to pay off \$300 in court fines.

In response, the judge simply said, "We will proceed without your father then." No further mention was made of this dramatic change in the child's circumstances, nor the likely traumatic disruption it was causing. The lack of acknowledgement was jarring to the court observers present.

Of all courtroom actors, the conduct of the judge seemed to have the greatest impact on how a young person conducted themselves in a hearing. Judges set the tone of a hearing, and appeared best positioned to create an environment in which youth could be heard, praised, and motivated - as well as held accountable, and effectively rebuked, when necessary.

Court observers felt that there was room for improvement, generally, in many judges' understanding of youth development and youth trauma, and how those things influence youth behavior in the courtroom.

Motivational interviewing skills, and the ability to interpret and effectively respond to "acting out" behavior (including "disrespectful" and "anti-authority" expression by young people), were areas of potential professional development identified for juvenile court judges.

There appear to be persistent difficulties for youth and families who require court interpreters. These challenges likely create serious equity issues for youth appearing in juvenile delinquency court.

In general, the online environment seemed to reduce the number of hearings in which a court interpreter was needed but not available. We observed no scenarios similar to those that took place in 2018. (For example, one 2018 detention hearing involved a child without legal representation acting as interpreter between his Spanish-speaking father and the judge, as the father argued for his son's release).

Nonetheless, our observers reported some issues regarding translation in 2020's online environment.

There did not appear to be any standard "best practices" (specifically for judges, attorneys and other professionals) regarding court translation during hearings that involved a non-English speaker. In many cases, no one acknowledged at the outset of the hearing that a translator was present and that participants should be cognizant of providing sufficient time for translation while speaking.

It seemed common for judges, attorneys and other government personnel to forget that a translator was present in an online hearing. In several cases, the translator had to stop whoever was talking, and ask for time to translate before more was said.

This may have created embarrassment for the individual receiving translation (feeling that they were holding up the proceedings or being singled out as a non-English-speaker), or possibly have created a sense of disrespect for the translator.

In the vast majority of cases, the court interpreter joined the hearing from a different site than the individuals needing translation. In at least one case, a translator called a parent via cell phone during the hearing, and provided simultaneous translation for the parent as the hearing proceeded. The former situation eliminated the need for the interpreter to interrupt the proceedings to translate.





APPENDIX D

Court Orders

We have included here links to PFDs of a few key administrative orders issues by the Utah Judicial Council, outlining how courts are meant to respond to the COVID-19 public health crisis. These four documents provide a general timeline of major changes pertaining to the functioning of the juvenile courts during the period of time in which our observations were conducted. Links to these items on the Utah Courts website are included in the endnotes as referenced below.

March 20, 2020 Administrative Order [23]

See pages 64-68

Risk Plan Color Phase [24]

See page 69

April 23, 2020 Amendment for Juvenile Courts [25]

<https://bit.ly/3xr7IH8>

October 2, 2020 Amended Order [26]

<https://bit.ly/3ymjhRm>

IN THE UTAH SUPREME COURT and UTAH JUDICIAL COUNCIL

Administrative Order for Court Operations During Pandemic

ADMINISTRATIVE ORDER

March 21, 2020

The World Health Organization has declared the COVID-19 outbreak to be a pandemic. Governor Herbert has declared a state of emergency. To protect the public and all court participants it has become necessary for the Utah judiciary to implement its Pandemic Response Plan.

To bring uniformity to the operation of the courts during the COVID-19 pandemic, the Chief Justice issued a March 13, 2020 Administrative Order. The purpose of the March 13, 2020 Administrative Order was to identify mission-critical functions of the judiciary at each court level, ensure that the courts remain open to perform those functions, and to do so in a manner that promotes the health of the public and all court participants.

In light of changing circumstances, it has become necessary to amend and replace the March 13, 2020 Administrative Order. Effective March 21, 2020, this Administrative Order amends and entirely replaces the March 13, 2020 Administrative Order.

IT IS HEREBY ORDERED:

General Orders

1. In accordance with page 6 of the Pandemic Response Plan, the Pandemic Response Plan is activated. The judiciary is at level “Red” in the plan and all members of the Judiciary are hereby instructed to implement the provisions in both level “Yellow” and level “Red”. All court personnel should be provided access to the Pandemic Response Plan as well as the Continuity of Operations Plan. The pandemic response plan remains operative. However, to the degree it is inconsistent with this Order, this Order supersedes the plan.
2. The coronavirus response team formed by the Administrative Office of the Courts is authorized to coordinate and implement the pandemic response. The response team should regularly communicate with members of the judiciary with information about COVID-19 and about efforts that have been taken, should be taken, and will be taken in response to the pandemic.
3. Presiding judges, trial court executives, clerks of court, and chief probation officers should implement their district pandemic response plans and should coordinate with community partners, such as sheriffs, jails, prosecutors, and defense attorneys. The districts should continually communicate with the response team on the effects of the pandemic in their area.

4. Managers must act in accordance with the Pandemic Response Plan by developing alternate work schedules, permitting or requiring telework, and cancelling in-person meetings and conferences, or conducting them remotely when possible.
5. Consistent with the Pandemic Response Plan, the coronavirus response team must help each court implement measures that will continue the mission-critical work of the judiciary while also protecting members of the judiciary and the general public.

Orders Applicable to All Court Levels

6. All courthouses shall remain open during regular business hours in a manner necessary to effectuate the mission of the courts, which may include being electronically or telephonically accessible. Individuals who show symptoms of COVID-19 or who have been exposed to someone with the symptoms of COVID-19 may not enter the courthouse.
7. Courts shall continue to accept filings, and shall be available to answer phone calls, emails, and other communications. Individuals who do not have access to e-filing may file pleadings by email in any pending case. If an individual wishes to file a pleading to initiate a case or file a notice of appeal, the individual should contact the court by telephone to make arrangements for filing. Lawyers are encouraged to stipulate to extensions of time. Judges are directed to grant liberally motions for extensions of time. This Order does not extend filing deadlines. Any future extension of a specific deadline will be made by separate order.
8. Self-represented litigants may file, without a wet signature, protective order requests, stalking injunction requests, and pleadings. The court will consider such a pleading “signed” consistent with Title 46, Chapter 4 of the Utah Code, Uniform Electronic Transactions Act, if (1) self-represented litigants include their name on the signature line of a pleading with the necessary declaration; and (2) the pleading is sent as an attachment in an email with a visible email address. Clerks of court shall accept emailed filings that meet these requirements.
9. Absent exigent circumstances, all hearings shall be conducted on the papers, or through remote transmission, such as by telephone or video conferencing. If an in-person hearing is necessary due to exigent circumstances, the Court shall conduct the hearing consistent with all applicable government and public health Orders, and the Court’s Pandemic Response Plan. A person who appears at the courthouse in response to a summons or pursuant to a promise to appear shall be given a new date to appear in court after June 1, 2020, and the court or clerk may address summary matters.
10. District court and justice court judges are directed to suspend all criminal jury trials (whether the defendant is or is not in custody) and all civil jury trials until after June 1, 2020. If a defendant is in-custody on class B or C misdemeanor offense(s), the assigned judge must reconsider the

defendant's custody status and is encouraged to release the defendant subject to appropriate conditions.

11. Presiding judges shall issue whatever orders are necessary to facilitate remote transmission of court hearings and to implement all other provisions of this Order. Orders issued by presiding judges or individual judges before the effective date of this Order that are consistent with this Order remain in effect. Orders may be issued hereafter by presiding judges or individual judges provided they are consistent with this Order. Any order issued by a presiding judge or individual judge before or after the effective date of this Order is superseded to the extent the Order is inconsistent with this Order.

Orders Applicable to Appellate Courts

12. Briefs shall be forwarded to the appellate courts by a PDF attachment to an email, with paper copies filed later upon the direction of the Clerk of Court.
13. Pending further notice, the appellate courts will determine which cases to set for oral argument. In general, except where oral argument would not facilitate the decisional process, oral arguments will be conducted in cases such as child custody, juvenile detention, child-welfare adjudications and dispositions, and other hearings involving child safety, in-custody defendants, and election matters.
14. Oral arguments shall be conducted by remote transmission.
15. Cases not set for oral arguments may be decided on the briefs.

Orders Applicable to District Courts

Criminal Cases

16. In accordance with paragraph 9 above, district courts shall continue to perform all mission-critical functions for in-custody defendants. As used here, mission-critical functions include, but are not necessarily limited to, probable cause review of warrantless arrests, bail hearings, bench warrant hearings, first appearances, appearances mandated by statute, preliminary hearings, and sentencing hearings.
17. District court judges are directed to continue until after June 1, 2020 all hearings in cases involving defendants who are not in custody.

Civil Cases

18. In accordance with paragraph 9 above, district courts shall continue to perform all mission-critical functions. As used here, mission critical functions include, but are not necessarily limited to, protective order hearings, stalking injunction hearings, temporary restraining order hearings,

guardianship hearings where the minor or incapacitated person is at risk of harm, involuntary commitment hearings, and hearings related to enforcement of custody and parent-time orders.

19. District court judges may hold other hearings in civil cases, provided the hearing is conducted by remote transmission and court staff is available.

Orders Applicable to Juvenile Courts

20. Juvenile court judges are directed to continue until after June 1, 2020 all hearings with the exception of the following: shelter hearings, child welfare adjudication and disposition hearings, detention hearings, in-custody delinquency adjudication and disposition hearings, detention reviews, protective orders, and any other hearing involving a child being at imminent risk of abuse, neglect, or dependency. Except as detailed below, these exceptional hearings shall be conducted on the papers or by remote transmission.
21. Any child welfare, delinquency, or protective order timeline may be extended by the court.
22. In accordance with paragraph 9 above, juvenile court judges are directed to conduct all child welfare hearings by remote transmission. If an exigent circumstance requires an in-person hearing, the following child welfare hearings may be held in a courtroom: (1) shelter hearings; (2) adjudication in removal cases; (3) adjudication in protective supervision cases where failure to adjudicate is likely to result in removal; and (4) any other hearing involving a child being at imminent risk of abuse, neglect, or dependency.
23. In accordance with paragraph 9 above, juvenile court judges are directed to conduct all delinquency hearings by remote transmission. If an exigent circumstance requires an in-person hearing, the following delinquency hearings may be held in a courtroom: (1) adjudication when a youth is in detention; (2) detention and detention reviews; and (3) any other hearing involving serious risk of community safety or safety of a youth only when alternatives to custody or confinement have been attempted and have failed.

Orders Applicable to Justice Courts

24. In accordance with paragraph 9 above, justice courts shall continue to perform all mission-critical functions for in-custody defendants. As used here, mission-critical functions include, but are not necessarily limited to, probable cause review of warrantless arrests, bail hearings, bench warrant hearings, arraignments, appearances mandated by statute, and sentencing hearings.
25. Justice court judges are directed to continue until after June 1, 2020 all hearings in criminal cases involving defendants who are not in custody, and all hearings in small claims cases.
26. Justice court judges are directed to continue until after October 1, 2020 all hearings in cases involving defendants who are not in custody and who are charged with violations of the traffic

code, except for cases in which the defendant is charged with reckless driving or driving under the influence.

27. Any justice court that fails to conform to this Order is subject to decertification by the Judicial Council.

Order Subject to Amendment

28. This Order may be amended at any time to respond to changed conditions.

DATED this 21st day of March 2020.



MATTHEW B. DURRANT
Chief Justice, Utah Supreme Court

DATED this 21st day of March 2020.



MATTHEW B. DURRANT
Presiding Officer, Utah Judicial Council

Risk Plan Color Phase

State of Utah Judiciary Risk Phase Response Plan Color Summary (6/26/2020)

Red
All restrictions included in the Yellow phase will be followed
All court patrons, including parties and attorneys, will interact with the court system remotely, unless exigent circumstances require in-person contact
The courts will continue mission-critical functions. All court hearings will be conducted remotely unless the court is persuaded exigent circumstances require an in-person hearing
At their discretion, judges may continue any matter into the future except for in-custody criminal cases and mission-critical juvenile court cases
Any in-person hearing under exigent circumstances must be limited to those who are required to attend. Yellow-phase requirements apply. Anyone who is able to attend remotely must be allowed to do so

Yellow
Social Distancing in common areas, work spaces, and courtrooms - maintain 6-foot distance
Court patrons are encouraged to wash their hands frequently, and use hand sanitizer where available
Courtrooms may have new capacity limits based on the size of the room and social distancing requirements
In-person patrons will be subject to COVID screening. If they cannot meet the safety criteria, they will be given contact information and not allowed into the courthouse
Face covering is required for court patrons and staff. Patrons are encouraged to bring their own face covering. If a patron refuses to wear face covering, entrance will be denied and they will be provided court contact information
Courts will follow and comply with COVID-19 contact tracing efforts for both staff and patrons
Courts are encouraged to conduct remote proceedings as much as feasible. In-person proceedings can be conducted provided safe social distancing can be maintained
Touch surfaces and equipment will be cleaned at regular intervals in common areas and in courtrooms
Patrons will be encouraged to file their petitions by email and can contact the courts for instructions

Green
Remote hearings can be considered when it is the most effective use of time and resources
Courts will continue to consider the needs and requests of vulnerable persons and provide reasonable accommodations
Business travel by court staff to an area where the CDC, WHO, or the Utah Department of Health recommends self-quarantine upon return is prohibited

END NOTES

[1] “And Justice for All Kids,” A Joint Report by Voices for Utah Children & The University of Utah S.J. Quinney College of Law, January 2019.

[2] Email between Daniel Meza Ricon (Assistant Juvenile Court Administrator for Utah State Courts) and Anna Thomas (Senior Policy Analyst, Voices for Utah Children), “Re: Follow-up Questions for Our Juvenile Indigent Defense Report,” June 23, 2021.

[3] Utah State Courts, “State of Utah Judiciary Risk Phase Response Plan” (Utah, December 24, 2020), <https://www.utcourts.gov/alerts/docs/20201224%20-%20Risk%20Phase%20Response%20Plan.pdf>.

[4] “3/13/20: In The Utah Supreme Court - In Re: Order for Court Operations During Pandemic - Administrative Order,” March 13, 2020, <https://www.utcourts.gov/alerts/docs/20200311%20-%20Pandemic%20Administrative%20Order.pdf>.

[5] “Administrative Order.”

[6] “In the Utah Supreme Court and Utah Judicial Council. Administrative Order for Court Operations during Pandemic”. Addendum to Administrative Order Dated March 21, 2020, April 23, 2020. <https://www.utcourts.gov/alerts/docs/20200423%20-%20Addendum%20to%20Pandemic%20Administrative%20Order%20iss-20200320.pdf>.

[7] Google Forms (By Google, 2015), <https://chrome.google.com/webstore/detail/google-forms/jhknlonankphkkbnmjdlpehkinifeeg?hl=en-US>.

[8] SignUpGenius (SignUpGenius, Inc. All Rights Reserved., 2021), <https://www.signupgenius.com/about>.

[9] Emily Harris, “UT Population Figures from 2019,” Research Brief (Kem C. Gardner Policy Institute, December 2019), <https://gardner.utah.edu/wp-content/uploads/StateCountyPopEst-Dec2019.pdf>.

[10] Harris.

[11] Harris.

[12] “DATA AND STATISTICS,” gov., Utah State Board of Education, 2019 2018, <https://www.schools.utah.gov/data/reports?mid=1424&tid=4>.

[13] Ciriac Alvarez and Anna Thomas, “[Striving For Equity In Utah’s Juvenile Justice System 2020 Disparities Update](#)” (Voices for Utah Children, August 14, 2020).

[14] “DATA AND STATISTICS,” gov., Utah State Board of Education, 2019 2018, <https://www.schools.utah.gov/data/reports?mid=1424&tid=4>.

[15] The data we collected via court observations in 2018 was NOT reported in this way in our 2019 publication. To make this direct comparison, we went back to the original source data compiled by Marina Pena and Wyatt Kirk (both Juvenile Justice Fellows with Voices for Utah Children between 2018 and 2019) and retained by Voices post-publication.

[16] See above.

[17] See above.

[18] “National Juvenile Defender Center,” National Juvenile Defender Center, n.d., <https://njdc.info/>.

[19] “Sixth Amendment Center,” Sixth Amendment Center Ensuring Fairness & Equal Access to Justice, n.d., <https://sixthamendment.org/>.

[20] SIXTH AMENDMENT CENTER, “The Right to Counsel in Utah: An Assessment of Trial-Level Indigent Defense Services,” October 2015, https://sixthamendment.org/6ac/6AC_utahreport.pdf.

[21] Jason Tashea, “The Legal and Technical Danger in Moving Criminal Courts Online,” edu, Brookings, August 6, 2020, <https://www.brookings.edu/techstream/the-legal-and-technical-danger-in-moving-criminal-courts-online/>; Eric Scigliano, “Zoom Court Is Changing How Justice Is Served,” The Atlantic, April 13, 2021, <https://www.theatlantic.com/magazine/archive/2021/05/can-justice-be-served-on-zoom/618392/>.

[22] “Young Teens (12-14 Years of Age),” gov., Center for Disease Control and Prevention, February 22, 2021, <https://www.cdc.gov/ncbddd/childdevelopment/positiveparenting/adolescence.html>; “Teenagers (15-17 Years of Age),” gov., Center for Disease Control and Prevention, February 22, 2021, <https://www.cdc.gov/ncbddd/childdevelopment/positiveparenting/adolescence2.html.young>

[23] “03/21/20: In The Utah Supreme Court and Utah Judicial Council. Administrative Order for Court Operations During Pandemic,” March 21, 2020, 2, <https://www.utcourts.gov/alerts/docs/20200320%20-%20Pandemic%20Administrative%20Order.pdf>.

[24] Utah State Courts, “State of Utah Judiciary Risk Phase Response Plan.”

[25] “Orders Applicable to Juvenile Court.”

[26] “10/02/20: In The Utah Supreme Court and Utah Judicial Council Administrative Order for Court Operations During Pandemic,” October 2, 2020, <https://www.utcourts.gov/alerts/docs/20201002%20-%20Amended%20Pandemic%20Administrative%20Order.pdf>.”