

STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8003

OFFICE OF
APPELLATE COURTS

DEC 31 2013

FILED

**ORDER FOR HEARING TO CONSIDER PROPOSED
AMENDMENTS TO THE RULES OF JUVENILE
DELINQUENCY PROCEDURE**

Court records in certain juvenile delinquency cases are open for public inspection. *See* Minn. Stat. § 260B.171, subd. 4 (a) (2012); *see also* Minn. Stat. § 260B.163, subd. 1 (2012). Similarly, the Supreme Court's Rules of Public Access to Records of the Judicial Branch presume that court records are "open to any member of the public for inspection or copying," Minn. R. Pub. Access 2, and the court's rules for juvenile delinquency proceedings also permit inspection and copying of juvenile court records. Minn. R. Juv. Delinq. P. 30.02, subd. 1.

The Minnesota Legislature amended section 260B.171 effective January 1, 2014, by adding a subdivision that restricts "direct public access to juvenile delinquency records maintained in electronic format in court information systems." Act of May 24, 2013, ch. 109, § 1, 2013 Minn. Laws 1447 (codified at Minn. Stat. § 260B.171, subd. 9 (2013)). The Advisory Committee on the Rules of Juvenile Delinquency Procedure considered this legislative amendment but recommended amendments to Rule 30.02 that, if adopted, would be consistent with the presumption of public access stated in the Rules of Public Access to Records of the Judicial Branch. By order filed November 22, 2013,

the court solicited written comments on the committee's proposed amendments. The court received four written comments, all of which opposed the committee's proposed amendments and asked the court to instead implement the restriction on electronic access to juvenile delinquency court records, as reflected in the legislative amendment to section 260B.171.

The court has reviewed the comments and the concerns identified by the commenters and the committee. The commenters and the committee have identified issues that require further review and consideration. Therefore,

IT IS HEREBY ORDERED THAT:

1. A public hearing will be held before this court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on February 18, 2014, at 10:00 a.m., to consider the proposed amendments to Rule 30.02 of the Minnesota Rules of Juvenile Delinquency Procedure. A copy of the committee's report and the proposed amendments are attached to this order.

2. All persons desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file seven copies of such statement with AnnMarie O'Neill, Clerk of Appellate Courts, 305 Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Boulevard, St. Paul, Minnesota 55155, on or before February 4, 2014.

3. All persons desiring to make an oral presentation at the hearing shall file seven copies of the material to be so presented with AnnMarie O'Neill, Clerk of Appellate Courts, 305 Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King Jr.

Boulevard, St. Paul, Minnesota 55155, together with a request to make an oral presentation. Such statements and requests shall be filed on or before February 4, 2014.

4. Pending the court's decision on the proposed amendments to Rule 30.02 of the Rules of Juvenile Delinquency Procedure, the presumption of public access to juvenile delinquency case records shall continue to apply, including to case records maintained electronically.

Dated: December 31, 2013

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Lorie S. Gildea", is written over a horizontal line.

Lorie S. Gildea
Chief Justice

NOV 19 2013

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**REPORT AND PROPOSED AMENDMENTS TO THE
MINNESOTA RULES OF JUVENILE DELINQUENCY PROCEDURE**

**MINNESOTA SUPREME COURT
JUVENILE DELINQUENCY RULES COMMITTEE**

ADM10-8003

November 19, 2013

Honorable Michelle A. Larkin, Chair

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Hon. Francis J. Connolly
Hon. Michele Davis
Jill E. Fedje
Hon. Conrad I. Freeberg
Hon. Fred Karasov
Julie A. Maxwell

Lisa McNaughton
Brenda Miller
Richard Quigley
Leslie J. Rosenberg
Robert Sommerville
Victor Walker

Hon. David Lillehaug
Supreme Court Liaison

Karen Kampa Jaszewski
Staff Attorney

I. INTRODUCTION

As directed by the Supreme Court, the Committee met to discuss two issues: 1) a recently enacted statute relating to juvenile delinquency case records, Minn. Stat. § 260B.171, subd. 9; and 2) the need to update the juvenile Statement of Rights forms in the Appendix to the Rules of Juvenile Delinquency Procedure. As a result of the discussion, the Committee recommends amendments to the rules and to two forms.

II. PROPOSED AMENDMENTS

A. Minn. Stat. § 260B.171, subd. 9:

The Committee discussed the recently enacted statute, which prohibits electronic access to certain public juvenile delinquency court records. The members reviewed the creation and evolution of the Minnesota Judicial Branch's statewide case management system, and discussed the existing limitations on what court records are and are not electronically available. Currently, pursuant to the Rules of Public Access to Records of the Judicial Branch, public court records are accessible electronically over the internet. Records are also available at courthouse electronic records terminals in all 87 counties. Pursuant to the Rules of Public Access, there is a search limitation on remote access that prevents access to pre-adjudication records based on a name search. Additionally, technology is in place on the Judicial Branch court records website, a distorted word known as a "Turing test," which prevents automated data harvesting of court records.

The Committee discussed the practical impact of implementing Minn. Stat. § 260B.171, subd. 9. The statute as written would require court staff to classify public cases as confidential in order to prevent electronic access, because the case management system has no ability to distinguish public accessibility from electronic accessibility on a case-by-case basis. Basically, a case is either public or it is nonpublic; there is no separate status of public but not electronically available. Additionally, the statute as written could result in court staff classifying and re-classifying a case at different points throughout the life of the case. For example, a public juvenile delinquency case would be opened as nonpublic to prevent electronic access, then later court staff would be required to make the case public upon receipt of an EJJ motion, and may later be required to make the case nonpublic again if the judge denies the EJJ motion and/or the parties agree the case should be inaccessible. The statute's presumption that cases can move fluidly from accessible to inaccessible is not reflective of the system's capabilities, creates extra work for court staff, and results in a high potential for error in case classification. Additionally, preventing electronic access to public records requires court staff to personally respond to all requests for access and to produce paper on demand, rather than relying on the technology in which the court has invested.

The Committee recognized that requiring court staff to produce paper records for the public is both inefficient and contrary to the court's efforts to go paperless, a transition which has already occurred in many court locations. While some members expressed support for limiting access to juvenile court records, all members recognized that requiring the courts to mask public records in this way serves only to place extra burdens on the courts while not addressing the issues that juveniles with a record face because the records are otherwise available at the courthouse, as well as through Bureau of Criminal Apprehension background checks required by statute. The Committee agreed that expansion of the expungement remedy or changes to Department of Human Services (DHS) licensure rules would be required before juveniles who have difficulty obtaining employment and/or DHS licensure would truly be able to move beyond the limitations imposed by their juvenile records. Finally, as control of and access to court records is a core function of the Judicial Branch governed by Supreme Court rules (as recognized in the Minnesota Government Data Practices Act), the statute raises significant separation of powers issues. Particularly problematic is the statute's unprecedented delegation of power to the parties to restrict access to the Judicial Branch's records without requirement of a court order.

For all of these reasons, the Committee agreed that the statute as written should not be implemented by the Judicial Branch and that decisions regarding access to court records should remain the province of the courts. Thus the Committee respectfully recommends that the Supreme Court adopt a rule that clearly states that access to electronic court records remains governed by court rule, and not by this or any other statute. A proposed change to Rule 30 is attached for the Supreme Court's consideration.

B. Statement of Rights Forms:

It was brought to the Committee's attention that the Statement of Rights forms are out of date and out of compliance with statute. The forms were reviewed and amendments are recommended to bring the forms up-to-date and into compliance. The Committee recommends that the Supreme Court amend the forms as proposed.

Respectfully Submitted,

JUVENILE DELINQUENCY
RULES COMMITTEE

PROPOSED AMENDMENTS TO THE RULES OF JUVENILE DELINQUENCY PROCEDURE

Note: Throughout these proposals, deletions are indicated by a line drawn through the words, and additions are underlined. A double underline indicates that the proposed text, if approved by the Court, should also be underlined in the final publication.

1. Amend Rule 30.02, subdivision 1, as follows:

Subdivision 1. By Statute or Rule. Juvenile Court records shall be available for inspection, copying and release as required by statute or these rules. Access to all reporter's tapes and electronic recordings and all other electronic records shall be governed solely by the Rules of Public Access to Records of the Judicial Branch.

2. Amend the Comments to Rule 30 by adding a new second paragraph to read as follows:

While often the Judicial Branch will conform its rules to statutes regarding Judicial Branch records as a matter of comity, the Branch is not doing so with regards to Minn. Stat. § 260B.171, subd. 9. Access to electronic court records is governed by Rule 8 of the Rules of Public Access to Records of the Judicial Branch, and not by statute. See Minn. Stat. § 13.90, subd. 2 ("Access to data of the judiciary is governed by rules adopted by the Supreme Court.")

Form 8. Statement of Rights: Juvenile Delinquency Proceedings

**STATEMENT OF RIGHTS
JUVENILE DELINQUENCY PROCEEDINGS**

You have been charged with a delinquent act by a document filed in Juvenile Court. You are presumed innocent of the charge(s) unless and until the state is able to prove guilt beyond a reasonable doubt. You have the following rights:

1. The right to understand the charge(s) against you.
2. The right to be represented by an attorney. If you cannot afford an attorney, the judge will appoint an attorney for you at public expense. The judge may order you or your parent(s), legal guardian(s), or legal custodian(s) to pay some or all of the attorney expense depending on the ability to pay. You may not be represented in court by anyone who is not an attorney, even if that person is your parent.
3. The right to plead guilty, plead not guilty, or remain silent. If you remain silent, the judge will enter a not guilty plea for you and the case will go to trial.
4. If you plead not guilty, you have additional rights including:
 - a. The right to a trial before a judge;
 - b. The right to require the state to prove beyond a reasonable doubt that you committed the offense(s);
 - c. The right to cross-examine witnesses called by the state;
 - d. The right to subpoena witnesses and present evidence on your own behalf; and
 - e. The right not to testify or to give an explanation of your actions.
5. If you plead guilty, you give up the rights listed in paragraph 4. The judge will ask you what you did. The judge cannot accept your guilty plea unless you admit doing something that is against the law.
6. Your guilty plea must be made freely and voluntarily, without threats or promises by anyone, with the exception of any plea agreement.
7. If you plead guilty or the judge finds you guilty, the judge may:
 - a. Counsel you and your parent(s), legal guardian(s) or legal custodian(s).
 - b. Place you on probation in your own home or a foster care facility under conditions established by the court;
 - c. Transfer your legal custody under court supervision and place you out of your home;
 - d. Transfer your legal custody by commitment to the Commissioner of Corrections;
 - e. Order restitution for any damage done to person(s) and/or property;
 - f. Order community work service and/or a payment of a fine up to \$1,000
 - fg. Order special treatment or care for your physical or mental health;
 - gh. Recommend to the Commissioner of Public Safety that your driver's license be canceled;

- ~~h.~~ Order community work service and/or a fine up to \$700.00;
- i. Require you to attend school until age 18 or completion of graduation requirements;
- j. Order the Commissioner of Public Safety to revoke your driver's license or to delay the issuance or reinstatement of your driver's license if you committed a controlled substance offense while driving a motor vehicle;
- k. Order an assessment of your need for sex offender treatment, and order that you undergo treatment, if you committed an offense involving criminal sexual conduct, interference with privacy, obscene or harassing telephone calls, or indecent exposure;
- l. Prohibit you from living near the victim if you committed a criminal sexual conduct offense;
- jm. Consider imposition of additional consequences if you committed a "crime of violence" and/or if a gun or dangerous weapon was involved;
- kn. Require you to submit a DNA sample if you have been charged with a felony; and/or
- lo. Require you to have a psychosexual evaluation, register as a predatory offender, and submit a DNA sample if you have been charged with a sexual offense or predatory offense.

8. If you plead guilty or the judge finds you guilty of a felony after your 14th birthday, this case may be used as a basis for additional jail or prison time if you are sentenced for another felony as an adult before your 25th birthday.

9. If you plead guilty or the judge finds you guilty of an offense, this case may be used as a basis to transfer any future felony-level case to adult court or treat it as an extended jurisdiction juvenile prosecution.

10. If you plead guilty or the judge finds you guilty of an offense and you are not a citizen of the United States, the plea or finding of guilt may result in deportation, exclusion from admission to the United States, or denial of naturalization as a United States citizen.

~~1011.~~ Your parent(s), legal guardian(s), or legal custodian(s) may not participate in the hearing until you either plead guilty or the judge finds you guilty of the offense. At that time your parent(s), legal guardian(s), or legal custodian(s) has the right to present information to the judge and may be represented by an attorney.

IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS, ASK YOUR ATTORNEY BEFORE THE HEARING OR, ASK THE JUDGE DURING YOUR HEARING.

DATE: _____
(Signature of Child)

DATE: _____

(Signature of Parent, Legal Guardian, or Legal Custodian)

Form 10. Statement of Rights: Juvenile Traffic Offender Proceedings

**STATEMENT OF RIGHTS
JUVENILE TRAFFIC OFFENDER PROCEEDINGS**

You have been charged as a juvenile traffic offender by a document filed in Juvenile Court. You are presumed innocent of the charge(s) unless and until the state is able to prove guilt beyond a reasonable doubt. You have the following rights:

1. The right to understand the charge(s) against you.
2. The right to be represented by an attorney that you hire. You do not have a right to appointment of a public defender or other counsel at public expense. If you wish to be represented by an attorney, you or your parent(s), legal guardian(s), or legal custodian(s) must hire one and pay the cost. You may not be represented in court by anyone who is not an attorney, even if that person is your parent.
3. The right to plead guilty, plead not guilty, or remain silent. If you remain silent, the judge will enter a not guilty plea for you and the case will go to trial.
4. If you plead not guilty, you have additional rights including:
 - a. The right to a trial before a judge;
 - b. The right to require the state to prove beyond a reasonable doubt that you committed the offense(s);
 - c. The right to cross-examine witnesses called by the state;
 - d. The right to subpoena witnesses and present evidence on your own behalf; and
 - e. The right not to testify or to give an explanation of your actions.
5. If you plead guilty, you give up the rights listed in paragraph 4. The judge will ask you what you did. The judge cannot accept your plea unless you admit doing something that is an offense.
6. Your guilty plea must be made freely and voluntarily, without threats or promises by anyone, with the exception of any plea agreement.
7. If you plead guilty or the judge finds you guilty of an offense, the judge may:
 - a. Reprimand you and counsel you and your parent(s), legal guardian(s) or legal custodian(s);
 - b. Continue the case for a reasonable period under such conditions governing your use and operation of motor vehicles or watercraft as the court may set;
 - c. Require you to attend a driver improvement course;
 - d. Recommend that the Commissioner of Public Safety suspend your driver's license;

- e. If you are found to have committed two moving highway traffic violations or to have contributed to a highway accident involving death, injury, or physical damage in excess of \$100, the judge may recommend that the Commissioner of Public Safety cancel your driver's license until you are 18;
- f. Place you on probation in your own home under conditions set by the judge including reasonable rules relating to the operation and use of motor vehicles or watercraft;
- g. Order restitution for any damage to person(s) and/or property;
- h. Order community work service or a fine up to ~~\$700~~1,000; and/or
- i. Order a chemical assessment for alcohol-related driving offenses and charge \$75.00 for the assessment.

8. Your parent(s), legal guardian(s), or legal custodian(s) may not participate in the hearing until you have either pled guilty or the judge finds you guilty of the offense. At that time, your parent(s), legal guardian(s), or legal custodian(s) has the right to present information to the judge and may be represented by an attorney.

IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS, ASK YOUR ATTORNEY BEFORE THE HEARING. IF YOU DO NOT HAVE AN ATTORNEY, ASK THE JUDGE DURING YOUR HEARING.

DATE: _____
 (Signature of Child)

DATE: _____

 (Signature of Parent, Legal Guardian, or Legal Custodian)