

STATE OF MINNESOTA

IN SUPREME COURT

C6-84-2165

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

IT IS HEREBY ORDERED that a hearing be had before this Court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on April 29, 2003 at 2:00 p.m., to consider the proposed amendments to the Rules of Juvenile Procedure made by the Supreme Court Advisory Committee on the Minnesota Rules of Juvenile Procedure. A copy of the proposed amendments is annexed to this order.

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, 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 14 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Rev. Dr. Martin Luther King Blvd., St. Paul, Minnesota 55155, on or before April 15, 2003 and
2. All persons desiring to make an oral presentation at the hearing shall file 14 copies of the material to be so presented with the aforesaid Clerk together with 14 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before April 15, 2003.

Dated: February 18, 2003

BY THE COURT:

OFFICE APPELLATE COURTS

FEB 18 2003

FILED


Kathleen A. Blätz
Chief Justice

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

**MINNESOTA SUPREME COURT
JUVENILE DELINQUENCY RULES COMMITTEE**

CX-01-926

December 10, 2002

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INTRODUCTION

On May 31, 2001, the Minnesota Supreme Court established the Juvenile Delinquency Rules Committee to review Rules 1-31 of the Minnesota Rules of Juvenile Procedure (the Juvenile Delinquency Rules), which were promulgated in August 1996. The Committee was given a fourfold charge:

1. Review case law relating to the Juvenile Delinquency Rules;
2. Review federal and state statutes relating to the Juvenile Delinquency Rules;
3. Monitor implementation of, and consider requests for revisions to, the Juvenile Delinquency Rules; and
4. Submit to the Supreme Court recommendations for necessary revision of the Juvenile Delinquency Rules.

The Committee was given a clear directive from the Court, however, that the Court would be unlikely to adopt rules or recommendations that were inconsistent with existing statutes. The Committee solicited input from a variety of individuals, professionals, agencies, and groups having experience and/or an interest in the Juvenile Delinquency Rules, and then created focused subcommittees to work through those and other issues. This document contains the technical and substantive amendments resulting from that work.

The Committee reached consensus on the proposed rules and forms here submitted. The following summary explains the areas of significant change and highlights the issues that generated the most debate by this Committee and/or significant comment from the public.

SUMMARY OF TECHNICAL AMENDMENTS

The following proposed amendments were made throughout the Rules to update and make uniform the format, citation form, and word choice used in the Rules:

- The current Rules were promulgated in 1996, prior to the recodification of the Juvenile Court Act, which split the statutes in Chapter 260 pertaining to juvenile delinquency and CHIPS into new Chapters 260B and 260C, respectively. The Committee updated all statutory references to reflect that recodification.
- All case, statute, and rules citations were checked for accuracy, and updated where appropriate.
- Citations to rules of procedure were made uniform. Internal cites to Juvenile Rules should appear in the form “Rule X”. Citations to other rules of procedure should be spelled out (i.e., Criminal Rules of Procedure X).
- Spacing in citations to statutes and rules of procedure has been corrected (i.e., Minn.Stat. has been changed to Minn._Stat. to denote the space in between abbreviations).
- Citations to Minnesota Statutes have been spelled out in the text of the rules (i.e., Minnesota Statutes, section 260B.198, subdivision 1), but abbreviations have been left in the comments to the rules.
- Numbers have been made uniform in the text of the rules so that they appear in both text and numeral form (i.e., “three (3)”).
- “Fax” has been replaced with “facsimile” or “facsimile transmission.”
- “Defendant” has been replaced with “child” where appropriate.
- “Child” has been replaced with “probationer” in rules setting forth procedure for probation revocation.
- The dash has been removed from the word “standby”.
- Punctuation has been added or deleted as appropriate.
- Rule 1.01 states that references to child’s counsel includes a child who is proceeding pro se; therefore, this statement has been removed from the text of the Rules where it is repeated. (It has not been similarly removed from the comments, however.)

SUMMARY OF SUBSTANTIVE AMENDMENTS

Following is a summary of the proposed amendments that were made to effect changes in the meaning, application, or organization of the Rules.

RULE 3. RIGHT TO COUNSEL

There are three proposed substantive changes to Rule 3. First, Rule 3.02, subds. 3 and 5 and the corresponding comments have been amended to clarify that a child may not be subject to out-of-home placement unless represented by counsel at the proceeding in which out-of-home placement is ordered. This is true even when the child is charged with a juvenile petty or traffic offense for which the child would not ordinarily be entitled to counsel.

Second, a provision has been added to Rule 3.04 and the corresponding comments stating that children who are subject to competency proceedings cannot waive counsel. Previously, this concept was contained in Rule 20, but the Committee considered it important to reiterate in the rule pertaining to counsel. See also proposed amendments to Rule 20.01 and comments.

Third, the Committee has proposed that Rule 3.07, subd. 2 be amended to limit the possibility of appointment of counsel for guardians ad litem to those situations in which the interests of the guardian ad litem and child are opposed. Currently, the Rule requires the child's counsel to represent the guardian ad litem as well; however, this creates the potential for a conflict of interest. Amending the rule as proposed would eliminate that potential, and bring it into conformity with Minn. Stat. § 260B.163, subd. 6 (2000), which states that "[t]he court may appoint separate counsel for the guardian ad litem if necessary."

RULE 4. WARRANTS

In Rule 4, the Committee has proposed two new rules pertaining to the issuance and filing of search warrants. Currently, search warrants are most often filed in adult court in accordance with Minn. R. Crim. P. 36, which makes their contents vulnerable to public examination. Thus, the primary concern in adding new Rules 4.01 and 4.02 was not to establish new procedure for issuing search warrants in juvenile matters, but rather to ensure that these search warrants are filed in the juvenile court. For that reason, the proposed rules refer to the Minnesota Rules of Criminal Procedure and statute as the main authorities governing the issuance of search warrants, but provide a procedure for judges issuing search warrants pertaining to juveniles to designate them for filing in the juvenile court. Old Rules 4.01 and 4.02 have been combined into new Rule 4.03.

RULE 5. DETENTION

In Rule 5.01, a majority of the Committee has recommended that a second sentence be added to clarify the computation of the timing for decisions regarding the detention of juveniles and juvenile detention hearings. Additionally, the Committee has recommended that language in the eighth paragraph of the comments to Rule 5, referring to the date of arrest, be deleted. Minnesota and federal juvenile detention statutes limit the amount of time that children can be

detained in secure detention facilities, shelter care facilities, adult jails, or municipal lockups without judicial review or release. See Minn. Stat. §§ 260B.176, subds. 2(b), (c) (2000); 260B.178, subd. 1(a) (2000); 42 U.S.C.A. § 5633(a)(13) and (14) (2002). The juvenile statutes do not exclude the day the child was taken into custody in the computation of the timing for detention. However, the statutes do explicitly exclude Saturdays, Sundays, and holidays.

Persons submitting public comment and members of the Committee identified three bases for confusion regarding the computation of the timing for detention. First, the language in the statutes and in Rule 5 is different from the adult criminal rules. For adults, the day of arrest is excluded from the computation of the 36-hour rule. See Minn. R. Crim. P. 4.02, subd. 5. Second, practices vary from county to county in Minnesota. Some of the larger counties exclude the day the child was taken in custody when determining the timing of juvenile detention decisions and detention hearings, and some do not. The Committee recognized that larger counties might have difficulty in complying with the time limits set by statute and rule. Third, the application of Minn. Stat. § 645.15 (2000)¹ could arguably affect the computation of time for juvenile detention matters. After consideration of these bases, the majority concluded that the juvenile delinquency statutes and public policy require the prompt review of decisions that remove children from the custody of their parents or guardian, and recommended the amendments as stated above.

In Rule 5.02 and the corresponding comments, the Committee has proposed that the definition of detention be amended so as not to include any type of house arrest that simply consists of following a curfew and parental rules. This proposal is offered for two reasons. First, the Committee wanted to clarify that house arrest should not be considered detention unless it also includes substantial liberty restrictions. Thus, an order to follow parental rules imposes a condition of release, but does not impose detention. Second, the Committee wished to clarify that when simple house arrest does not rise to the level of detention, it is also not subject to the informal detention review required by Rule 5.08, subd.1.

Rule 5.06 pertaining to fingerprinting and photographing juveniles has been amended to conform to the requirements of Minn. Stat. § 299C.10 (2000 & Supp. 2001).

Rule 5.07 has been amended to reflect the federal 24-hour detention rule for children detained in an adult jail or municipal lockup.

Some comments received suggested that the Committee consider amending Rules 5 and 15 to require that the court review and make the findings necessary to secure federal Title IV-E funding for juvenile out-of-home placements in all detention and disposition hearings. The Committee reviewed the applicable law and concluded that the rules should not be amended to

¹ Minn. Stat. § 645.15 (2000) provides, “[w]here the performance or doing of any act, duty, matter, payment, or thing is ordered or directed, and the period of time or duration for the performance or doing thereof is prescribed and fixed by law, the time, except as otherwise provided in 645.13 and 645.14, shall be computed so as to exclude the first and include the last day of the prescribed or fixed period or duration of time.” Similarly, Minn. R. Juv. P. 31.01, states, “[u]nless otherwise provided by statute or specific Minnesota Rules of Juvenile Procedure, the day of the act or event from which the designated period of time begins to run shall not be included.”

require compliance with Title IV-E in juvenile delinquency out-of-home placement decisions because the requirements would conflict with the statutory dispositional factors. See Minn. Stat. § 260B.198 (2000).

RULE 6. CHARGING DOCUMENT

The proposed amendments to the comments to Rule 6 simply reorganize the original content.

RULE 7. ARRAIGNMENT

In Rule 7.02, subd. 2, the Committee has proposed an amendment that will require the arraignment to be held within 30 days after the charging document has been filed. This proposal was made in response to public comment that in some courts, arraignments are being scheduled far in excess of twenty days after filing of the petition. The Committee received public comment objecting to imposition of the 30-day timeline and recognizes that, due to limited resources and calendar time, the proposed timeline will be extremely difficult for some courts to comply with initially. However, the Committee felt that there were overriding policy reasons for requiring juvenile cases to move through the court system on an expedited basis, and voted to retain the amendment as proposed.

RULE 8. PLEAS

The purpose of the proposed amendments to Rule 8.01 is to set out more clearly those instances in which Rule 8 is not the applicable rule for entering pleas.

RULE 10. DISCOVERY

In Rule 10.04, the Committee has proposed a new subpart requiring the prosecutor to disclose special education and school disciplinary records in the prosecutor's possession in cases referred by the school for prosecution. The language was based on 20 U.S.C. § 1415(k)(9) (2000).

RULE 13. TRIALS

In Rule 13, as in Rule 6, the proposed amendments simply reorganize the commentary and clarify the timing for a speedy trial demand.

RULE 15. DELINQUENCY DISPOSITION

Rule 15.02 sets forth the timing for entry of the order for disposition. However, the Committee received public comment stating there is a need for a sanction for failure to comply with that timing. There was a great deal of discussion as to whether and when dismissal might be an appropriate sanction for violating the timelines for disposition, but no firm agreement. As a result, the Committee agreed to amend the rule to allow for dismissal, but drafted the amendment so as to be permissive rather than mandatory.

In Rule 15.07, subd. 1, the Committee added a requirement that the probation violation report also list the underlying offense for which the violation is alleged. This is to eliminate confusion in situations where the child has multiple case files before the court.

Finally, the Committee recommends that the text of several comments be removed because they pertain more to extended jurisdiction juvenile proceedings than to disposition.

RULE 17. JUVENILE PETTY OFFENDER AND JUVENILE TRAFFIC OFFENDER

The majority of the amendments proposed for Rule 17 reorganize the rule, but do not substantively change the procedure for juvenile petty and traffic offender cases. A general statement has been added in Rule 17.01 stating that the general rules of juvenile delinquency apply except as provided by this rule. This is intended to replace numerous sub-rules that previously referred the reader to other rules for applicable procedures (e.g., old Rule 17.05 referred to Rule 5 for procedures governing detention). The only exception to this organization is in proposed Rule 17.03, which refers the reader to Rule 4 for procedure governing warrants. Previously, the procedure governing warrants in juvenile petty and traffic offender cases was contained in both Rules 4 and 17.04; however, there was slight variation in the text of each rule. In these amendments, the Committee has proposed a revision to Rule 4 (see Rule 4.03, subd. 3) to incorporate the language that was previously contained in Rule 17.04, and has proposed that Rule 17 refer to Rule 4 for the warrant procedure.

In addition, the Committee has proposed three substantive changes to Rule 17. First, because the definition of a juvenile petty offense is subject to frequent change, Rule 17.01, subd. 1 has been amended to refer to the statute for the definition. Similarly, Rule 17.01, subd. 3 has been amended to refer to the statute for the definition of adult traffic court to eliminate jurisdictional confusion in this area. Finally, where appropriate, Rule 17 has been amended to clarify, as was done in Rule 3, that children alleged to have committed juvenile petty and traffic offenses are entitled to court-appointed counsel when they face the possibility of out-of-home placement.

RULE 18. CERTIFICATION OF DELINQUENCY MATTERS

Rule 18 contains several proposed changes. First, because the content of old Rule 18.08 seemed to pertain more to application and initiation of certification proceedings, the Committee has proposed moving the content to Rules 18.01 and 18.02. Additionally, in Rule 18.02, the Committee has proposed eliminating the statement of intent to prosecute because it pertains more to the old reference procedure than to the newer certification procedure.

In Rule 18.07, the Committee has attempted to set forth the required contents of the certification order. A distinction has been made, based on case law, between what the order must contain: 1) when a child waives the certification hearing; and 2) following a contested certification hearing. In addition, the Committee has proposed eliminating the requirement to designate time spent in custody because, if the child is subsequently given an adult sentence, the Minnesota Rules of Criminal Procedure, not the Juvenile Delinquency Rules of Procedure, will

govern jail credit. The rationale for eliminating this provision has also been set forth in the comments.

Finally, in Rule 18.09, the Committee has proposed a new procedure for withdrawal of the waiver of certification hearing. This is in response to In re Welfare of S.J.D., 617 N.W.2d 614 (Minn. Ct. App. 2000), in which the Court of Appeals stated that it would be helpful to have a rule that sets standards for withdrawal of a waiver of certification hearing in appropriate cases. The burden of proof set forth in subdivision 1 is based on the burden for withdrawing a plea of guilty as set forth in Rule 8.04, subd. 2.

RULE 19. INITIATION OF EXTENDED JURISDICTION JUVENILE PROCEEDINGS AND PROSECUTION

Rule 19 also contains several proposed changes. Most significantly, the Committee has proposed that the terminology of the Rule be amended to conform to statute and to clarify that an “extended jurisdiction juvenile *proceeding*” is the process to determine whether the child should be prosecuted as an extended jurisdiction juvenile whereas an “extended jurisdiction juvenile *prosecution*” includes the trial, disposition, and subsequent proceedings after it has been determined that the child should be prosecuted as an extended jurisdiction juvenile. Additionally, the Committee drafted new Rule 19.06 to explain the methods by which that determination is made, and to differentiate those situations when a child *must* be prosecuted as an extended jurisdiction juvenile from those situations when such prosecution is at the court’s discretion.

In new Rule 19.07, the required contents of the extended jurisdiction juvenile order have been more clearly laid out, and a distinction has been made, based on case law, between what the order must contain: 1) when the child waives the extended jurisdiction juvenile hearing; and 2) following a contested extended jurisdiction juvenile hearing.

To parallel the format in Rule 18, a procedure for withdrawal of the waiver of extended jurisdiction juvenile hearing has been created in new Rule 19.08. The burden of proof set forth in subdivision 1 is based on the burden for withdrawing a plea of guilty as set forth in Rule 8.04, subd. 2.

Finally, Rule 19.09(B) has been amended to allow the timing of the EJJ trial to be extended for good cause, and a comment has been added to set forth the Committee’s intent that the term “good cause” be narrowly applied.

RULE 20. CHILD INCOMPETENT TO PROCEED AND DEFENSE OF MENTAL ILLNESS OR MENTAL DEFICIENCY

In reviewing Rule 20, the Committee attempted to answer whether a child can be required to be represented by counsel when the child’s competency is at issue. Research in this area indicated that the right to self-representation has not been extended to juveniles; therefore, the Committee concluded that representation could be required for a child. As a result, the Committee has proposed that Rule 20.01 be revised so that it defines incompetency and prohibits

a child subject to incompetency proceedings from waiving counsel. The comments have also been amended to set forth the rationale for refusing to permit a child to waive counsel during competency proceedings

Moreover, the Committee took notice of the fact that there are now more statutorily defined gross misdemeanors representing the commission of serious acts, and determined that some gross misdemeanor offenses warrant prosecution in the same manner as felonies should the child later be found to be competent. Therefore, in the interest of public safety, the Committee recommends that Rule 20.01, subd. 5 be amended to give the court discretion to either dismiss or suspend proceedings if the child is alleged to have committed a gross misdemeanor and has been found incompetent.

RULE 21. APPEALS

The primary substantive amendment proposed for Rule 21 is the addition of a new subpart (D) in Rule 21.04, subd. 1, which allows prosecutors to appeal orders dismissing a petition for lack of probable cause when dismissed solely on a question of law. This provision was taken directly from case law, and a comment was added for explanation. In addition, the statutory reference previously stated in the rule (referring to dismissals in the interest of justice) was removed because the statute pertains to criminal rather than juvenile matters.

RULE 23. REFEREE

In reviewing Rule 23, the Committee questioned whether the right to appeal orders dismissing a petition for lack of probable cause established in Rule 21 would affect the limited review of referees' decisions as stated in Rule 23.05, subd. 3(b). The Committee researched the issue, and found no clear guidance other than an unpublished decision, In re Welfare of T.S.F., CX-90-2615, 1991 WL 90869 (Minn. Ct. App. 1991), in which the court of appeals stated, "[a]lthough the request for review may be in whole or in part, the judge is not limited by the request and may review all or part of the referee's findings and recommendations." *Id.* at *1. Additionally, the Committee noted that Minn. Stat. § 260.03, subd. 5 provides that an order issued by a referee is not final until confirmed by a district court judge. Based on these findings, the Committee concluded that the review of a referee decision should not be limited, and has proposed that the limitation contained in Rule 23.05, subd. 3(B) be deleted.

RULE 24. GUARDIAN AD LITEM

Rule 24 parallels Minn. Stat. § 260B.163, subd. 6, except for the requirement that the court set forth its reasoning for not appointing a guardian ad litem. The Committee could find no justification for the additional finding required by the rule; therefore, it recommends that the provision be deleted from the rule.

RULE 25. NOTICE

In Rule 25.03, subd. 4, the Committee proposes adding three days to the timing for mailing a notice in lieu of summons to ensure that the child and his or her parents or guardian

have adequate notice of pending hearings. In addition, the comments have been amended to reflect case law stating that informal service methods may not be used when the rules require a specific method of service.

RULE 28. COPIES OF ORDERS

In Rule 28, the Committee has proposed adding probation officers to the list of automatic recipients of court orders because the orders are essential to the functioning of the officer's position.

RULE 30. RECORDS

Prosecuting attorneys routinely require access to past cases in order to prosecute current cases. Rule 30.02, subd. 2 allows them to access juvenile court records without a court order. Because the rule is not specific, however, prosecutors in adult court are often denied access to a person's juvenile court record, even within the time period mentioned by the rule. The Committee has proposed adding a comment to clarify that the term "prosecuting attorney" refers to prosecutors in both adult and juvenile court.

The Committee also considered amending Rule 30 to give prosecutors access to juvenile records outside of the stated time limit for predicate offenses. However, the Committee was unable to agree on language that would adequately define "predicate offenses" so as not to place a burden on court administration to identify them. Therefore, the Committee decided not to amend the rule to include this language.

SUMMARY OF PROPOSED FORMS

After completing the proposed amendments to the Rules, the Committee established a Forms Subcommittee to review all existing forms appended to the Juvenile Delinquency Rules. The existing forms were updated, and several new forms were drafted.

In approaching the review of the Juvenile Delinquency Forms, the Committee agreed overwhelmingly that there is a need for a uniform Petition. As such, the Committee originally intended to recommend that the Petition, if approved, be a mandatory form. However, the Committee ultimately rejected this idea for two reasons. First, due to the expedited time schedule for the development and implementation of MNCIS, it is likely that further changes will need to be made to the Petition within the next two years. Second, the Petition as drafted would require a significant practice change in Hennepin County. Currently, the Rules do not require a finding of probable cause unless the child is in custody, the defense has demanded a probable cause statement, the court is issuing a warrant, or the child's competency has been challenged. See Minn. R. Juv. P. 6.05, subd. 2. However, the Petition as drafted assumes that a probable cause statement or reports supporting probable cause will be included with the Petition. Due to the large volume of cases, it is currently not the practice in Hennepin County to include a probable cause statement except in the circumstances enumerated in Rule 6.05. Because making the Petition mandatory would require a significant change in practice, the Committee chose not to so recommend at this time.

The Committee did not recommend that any of the other forms be made mandatory. However, it strongly recommends that new waiver forms and new and revised plea petitions be used in all felony level or enhanceable cases. This recommendation has been incorporated into the proposed introductory language to the forms.

All of the forms requiring input by the user are active forms created in Word. They contain text fields and check boxes that can be filled in online. If the forms are approved, it is anticipated that they will be posted on the Supreme Court website (as the current forms are now) and CourtNet for ease of access and use by practitioners in the court and juvenile justice system.

The forms in this packet do not contain the conventions used in the proposed amendments to the Rules indicating the addition or deletion of language because it was not possible to make those indications within the active form format. The following list indicates whether the forms have been revised or newly created:

- Petition (new form)
- Notice of the Rights of Victims in Juvenile Court (revised)
- Notice in Lieu of Summons (revised)
- Summons (revised)
- Prosecutor's Request for Disclosure (revised)
- Prosecutor Notice of Evidence and Identification Procedures (revised)
- Petition to Proceed Pro Se in Juvenile Delinquency Proceeding (new form)
- Statement of Rights: Juvenile Delinquency Proceedings (revised)
- Statement of Rights: Juvenile Petty Offender Proceedings (revised)
- Statement of Rights: Juvenile Traffic Offender Proceedings (revised)

- Statement of Rights: Juvenile Probation Revocation (new form)
- Waiver of Right to Contested Hearing in an Extended Jurisdiction Juvenile Case (new form)
- Waiver of Right to Contested Hearing in a Non-Presumptive Certification Case (new form)
- Waiver of Right to Contested Hearing in a Presumptive Certification Case (new form)
- Petition to Enter Plea of Guilty in Extended Jurisdiction Juvenile Case (new form)
- Petition to Enter Plea of Guilty in Juvenile Delinquency Matter (revised)

LEGISLATIVE ISSUES

During the course of the Committee's work, a few issues were raised that the Committee could not address either because an amendment would result in a conflict between the Rules and statutes or because the issue was controlled solely by statute. This section contains a summary of those issues.

A. Effect of Underage Drinking Offense on Adult DWI Record

Minn. Stat. § 169A.33 (2000) establishes an offense for underage drinking and driving. The statute provides that it is a crime for a person who is under the age of 21 to drive, operate, or be in control of a motor vehicle while consuming alcoholic beverages. Id. The offense establishes a no tolerance policy because, unlike the adult DWI offense, the threshold for guilt under the statute is consumption of alcohol rather than being under the influence of alcohol. Compare Minn. Stat. § 169A.20 (2000) with Minn. Stat. § 169A.33.

When an individual is charged with a DWI offense under Minn. Stat. § 169A.20, the degree of the offense is determined by Minn. Stat. §§ 169A.24 - .26 (Supp. 2001), which enumerate specific numbers of aggravating factors. Aggravating factors are calculated pursuant to Minn. Stat. § 169A.095 (2000) by counting the number of "qualified impaired driving incidents" within ten years preceding the current offense. Qualified impaired driving incidents are defined in Minn. Stat. § 169A.03, subd. 22 (2000) as including prior impaired driving convictions and prior impaired driving-related losses of license. Looking to the definition of each, prior adjudications under Minn. Stat. § 169A.33 are not explicitly included; however, the definitions could be inclusive of those adjudications in certain circumstances.

First, Minn. Stat. § 169A.03, subd. 20 (2000), which defines "prior impaired driving conviction," states that such convictions include prior juvenile adjudications that would have been prior impaired driving convictions if committed by an adult. This could include adjudications under Minn. Stat. § 169A.33 if the juvenile consumed alcohol in quantities that would also violate Minn. Stat. § 169A.20 (i.e., .10 or above).

Second, under Minn. Stat. § 169A.03, subd. 21 (2000), which defines "prior impaired driving-related loss of license," there are numerous provisions, especially in subpart (1), under which a juvenile might be subject to loss of license as a result of a juvenile alcohol adjudication. Thus, these provisions could also serve as the basis for determining qualified impaired driving incidents.

Because these definitions do not explicitly exclude adjudications for underage drinking offenses, it is possible that a juvenile adjudication under Minn. Stat. § 169A.33 could result in enhancement of a DWI offense committed as an adult. When the felony DWI bill was considered by the legislature, there was no discussion regarding the use of juvenile adjudications for enhancement. However, the law could be read to include those adjudications. The intent of the legislature with regard to the consequences of a juvenile adjudication for underage drinking and driving should be clarified.

B. Provision of Counsel for Underage Drinking Offenses

As stated above, an adjudication for underage drinking and driving could potentially result in enhancement of an adult DWI offense. Pursuant to Minn. Stat. § 260B.225, subd. 4 (2000), if the drinking and driving offense is prosecuted under Minn. Stat. § 169A.33, the juvenile court will have original jurisdiction in the case. However, due to the operation of both Minn. Stat. § 260B.163, subd. 4 (2000)² and Minn. R. Juv. P. 17.03, subd. 1, a child charged with an underage drinking and driving offense would not be entitled to appointment of counsel at public expense. Thus, a child could be unrepresented in a proceeding that may result in very serious consequences. If the intent of the legislature is to include prior adjudications among those prior offenses that can result in the enhancement of a DWI committed as an adult, then the Committee believes that Minn. Stat. § 260B.163, subd. 4 should be amended to allow appointment of counsel at public expense in the juvenile proceeding.

C. Sex Offender Registration

During the initial public comment stage, the Committee received several requests for an amendment to Rule 15.05, subd. 4(B) to extend the time allowed for continuance without adjudication for a child not in detention beyond the current 180 days. However, these requests stemmed from the desire of the persons commenting to find a way to avoid imposing on the juvenile the consequence of sex offender registration. The Committee as a whole felt that it was inappropriate to amend the rule for this singular purpose. Instead, the Committee recognizes that the propriety of juvenile sex offender registration is a legislative issue that should be addressed by statutory amendment.

Respectfully Submitted,

JUVENILE DELINQUENCY
RULES COMMITTEE

² It should be noted that Minn. Stat. § 260B.163, subd. 4 contains a typographical error. It currently refers to “section 260B.007, subdivision 15,” but should instead refer to section 260B.007, subdivision 16.” This error has been communicated to Diane Knowlton, statutory editor with the Revisor of Statutes office.

**MINNESOTA RULES OF JUVENILE PROCEDURE
DELINQUENCY, JUVENILE PETTY OFFENSES AND
JUVENILE TRAFFIC OFFENSES**

Notes on Proposed Changes

Following is a listing of the Juvenile Delinquency Rules of Procedure for which the Supreme Court Juvenile Delinquency Rules Committee is proposing amendments. In preparing the amendments, the following conventions were applied:

- This document is not a complete listing of the Juvenile Delinquency Rules; only the Headnotes and portions of the Rules containing proposed amendments are shown here.
- Deleted text is indicated with an overstrike.
- Added text is indicated with an underscore.
- Double underscoring indicates that the text to be added should also be underlined.
- Statute and rule citations containing underscores indicate that additional spacing should be inserted (i.e. Minn._Stat. indicates that a space should be inserted in Minn.Stat.).
- The word “stand-by” should be replaced with “standby” (no dash) where found. See Minn. R. Juv. P. 3.02, subd. 3 and 8.04, subd. 1(D).
- In the Comment to Rule 7, the dash in “1-(G)” is an overstrike indicating that the space should be removed.
- In the Comment to Rule 15, the line between the first and second paragraphs is an overstrike indicating that the two paragraphs should be combined.
- This document contains 1.5 spacing between lines for ease of editing; the published Juvenile Rules of Procedure would be single-spaced.

**MINNESOTA RULES OF JUVENILE PROCEDURE
DELINQUENCY, JUVENILE PETTY OFFENSES AND
JUVENILE TRAFFIC OFFENSES**

[amendments to Table of Headnotes shown here to correspond with proposed amendments]

RULE 1. SCOPE, APPLICATION, AND GENERAL PURPOSE [no changes necessary]

RULE 2. ATTENDANCE AT HEARINGS AND PRIVACY [no changes necessary]

RULE 3. RIGHT TO COUNSEL

- 3.04 Waiver of Right to Counsel
1. Conditions of Waiver
 2. Competency Proceedings
 3. Court Approval/Disapproval

RULE 4. WARRANTS

- 4.01 ~~Warrant for Immediate Custody~~ Search Warrants Upon Oral Testimony
- 4.02 Search Warrants Upon Written Application
- 4.03 Warrants for Immediate Custody
1. Probable Cause Required
 2. Warrant
 3. Warrant for Juvenile Petty or Traffic Offenses
 4. Contents of Warrant for Immediate Custody
- 4.02 ~~Execution of Warrant for Immediate Custody~~
15. Who May Execute
 26. How Executed
 37. Where Executed
 48. When Executed
 59. Possession of Warrant
 610. Advisory

RULE 5. DETENTION

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DELINQUENCY, JUVENILE PETTY OFFENSES, AND JUVENILE TRAFFIC OFFENSES

RULE 1. SCOPE, APPLICATION AND GENERAL PURPOSE

RULE 1.01 SCOPE AND APPLICATION

~~Minnesota Rules of Juvenile Procedure~~ 1 through 31 govern the procedure in the juvenile courts of Minnesota for all delinquency matters as defined by Minnesota Statutes ~~§ 260.015, subd. 5, section 260B.007, subdivision 6,~~ juvenile petty matters as defined by Minnesota Statutes ~~§ 260.015, subd. 21, section 260B.007, subdivision 16~~ and juvenile traffic matters as defined by Minnesota Statutes ~~§ 260.193, section 260B.225.~~ Procedures for juvenile traffic and petty matters are governed by ~~Minnesota Rules of Juvenile Procedure~~ 17.

Juvenile protection matters, including truants and runaways, are governed by the procedures in ~~Minnesota Rules of Juvenile Procedure~~ 37 through ~~6582~~.

Where these rules require giving notice to a child, notice shall also be given to the child's counsel if the child is represented. Reference in these rules to "child's counsel" includes the child who is proceeding pro se.

Where any rule obligates the court to inform a child or other person of certain information, the information shall be provided in commonly understood, everyday language.

In cases involving an Indian child, which may be governed by the Indian Child Welfare Act, 25 U.S.C.A. Chapter 21, §§ 1901-1963, these rules shall be construed to be consistent with that Act. Where the Minnesota Indian Family Preservation Act, Minnesota Statutes ~~§§ 257.35—257.3579,~~ sections 260.751 through 260.835 applies, these rules shall be construed to be consistent with that Act.

RULE 1.02 GENERAL PURPOSE [no proposed amendments]

Comment--Rule 1

Minn._R._Juv._P. 1.02 is based upon Minn._Stat. § ~~260.011, subd. 2(e) (1994)~~260B.001, subd. 2 (2000).

The Indian Child Welfare Act does not apply to placements of Indian children ~~which~~that are based upon an act which, if committed by an adult, would be deemed a crime. 25 U.S.C. § 1903(1) (1988). However, Minn._Stat. § ~~257.352 (1994)~~260.761 (2000) of the Minnesota Indian Family

Preservation Act requires that the Indian child's tribal social service agency receive notice when the court transfers legal custody of the child under Minn. Stat. § ~~260.185~~260B.198, subd. 1(c)(1), (2) and (3) (~~1994~~)(2000) following an adjudication for a misdemeanor-level delinquent act.

RULE 2. ATTENDANCE AT HEARINGS AND PRIVACY

[no proposed changes]

Comment--Rule 2

Minn. R. Juv. P. 2.01 allows persons authorized by statute to attend juvenile court proceedings. They include the public, in cases where a juvenile over age 16 is alleged to have committed a felony, and victims. The public is also entitled to be present during a juvenile certification hearing where a juvenile over age 16 is alleged to have committed a felony, except that the court may exclude the public from portions of a certification hearing to discuss psychological material or other evidence that would not be accessible to the public in an adult proceeding. Minn. Stat. § ~~260.155~~260B.163, subd. 1(c) (~~1994~~)(2000). The statute does not currently permit exclusion when similar material is being presented in an extended jurisdiction juvenile proceeding. This may simply be an oversight. See also Minn. Stat. § 609.115, subd. 6 (1994).

Minn. R. Juv. P. 2.02 permits exclusion of persons from hearings, even when they have a right to participate, to serve the child's best interests. For example, sometimes expert opinions are offered to the court regarding a child's psychological profile or amenability to probation supervision. Counsel are usually aware of such opinions and if it serves no useful purpose or may even be detrimental to a child's best interests to hear these opinions, it may be appropriate to temporarily exclude the child from the hearing. Obviously, this should be brought to the court's attention either before the hearing or at a bench conference. Because a child charged with a juvenile petty or juvenile traffic offense does not have a right to appointment of counsel at public expense, that child cannot be excluded unless the child is represented by counsel.

Minn. R. Juv. P. 2.03, subd. 2 provides that the prosecuting attorney shall be present or available for all hearings unless excused by the court in its discretion. On occasion, because of time constraints and distance, it may be impossible for the prosecuting attorney to be present in person at a particular hearing. So long as the prosecuting attorney is available by telephone conference, the hearing could proceed without the prosecutor actually being present.

Minn. R. Juv. P. 2.05 requires full disclosure by the court to all counsel on the record of any attempted ex-parte communication. Juvenile court has historically been less formal and more casual than other court proceedings. As a result, lawyers, probation and court services personnel, law enforcement, victims, and relatives of the child have sometimes attempted and succeeded in having ex-parte contact with the juvenile court judge. As the sanctions for delinquency become more severe, due process safeguards become more imperative.

RULE 3. RIGHT TO COUNSEL

RULE 3.01 GENERALLY [no proposed amendments]

RULE 3.02 APPOINTMENT OF COUNSEL [no proposed amendments to subdivisions 1, 2, 4, 6, and 8]

Subd. 3. Out-of-Home Placement. In any proceeding in which out-of-home placement is proposed, the court shall appoint counsel at public expense to represent the child, if the child cannot afford counsel and private counsel has not been retained to represent the child. If the child waives the right to counsel, the court shall appoint stand-by counsel to be available to assist and consult with the child. No out-of-home placement may be made in disposition proceedings, in violation proceedings, ~~or in subsequent related violation proceedings~~ or in subsequent contempt proceedings, if the child was not initially represented by counsel or stand-by counsel, except as provided herein. If out-of-home placement is proposed based on a plea or adjudication obtained without assistance of counsel, the child has an absolute right to withdraw that plea or obtain a new trial.

Subd. 5. Juvenile Petty Offense or Juvenile Traffic Offense.

(A) In any proceeding in which the child is charged as a juvenile petty offender or juvenile traffic offender, the child or the child's parent may retain private counsel, but the child does not have a right to appointment of a public defender or other counsel at public expense, ~~except: where a child charged with a misdemeanor is designated a juvenile petty offender by the prosecuting attorney as set forth in Minnesota Rules of Juvenile Procedure 17.01, subd. 1 (C)~~

(1) when the child may be subject to out-of-home placement as provided in Minnesota Statutes, section 260B.235, subdivision 6; or

(2) as otherwise provided pursuant to ~~Minnesota Rules of Juvenile Procedure 3.02, subs. subdivisions 3, 6 and 7.~~

(B) Except in the discretion of the Office of the State Public Defender, a child is not entitled to appointment of an attorney at public expense in an appeal from adjudication and disposition in a juvenile petty offender or juvenile traffic offender matter.

Subd. 7. Child Incompetent to Proceed. Every child ~~has the right to~~ shall be represented by an attorney in any proceeding to determine whether the child is competent to proceed. An attorney shall be appointed for any child in such proceeding who cannot afford to hire an attorney. ~~If the child waives representation, standby counsel shall be appointed.~~

RULE 3.03 DUAL REPRESENTATION

A child is entitled to the effective representation of counsel. When two or more children are jointly charged or will be tried jointly pursuant to ~~Minnesota Rules of Juvenile Procedure 13.07,~~ and two or more of them are represented by the same counsel, the following procedure shall be followed:

(A) The court shall address each child individually on the record. The court shall advise the child of the potential danger of dual representation and give the child the opportunity to ask the court questions about the nature and consequences of dual representation. The child shall be given the opportunity to consult with outside counsel.

(B) On the record, the court shall ask each child whether the child

- (1) understands the right to be effectively represented by a lawyer;
- (2) understands the details of the lawyer's possible conflict of interest;
- (3) understands the possible dangers in being represented by a lawyer with these possible conflicts;
- (4) discussed the issue of dual representation with a separate lawyer; and
- (5) wants a separate lawyer or waives their Sixth Amendment protections.

RULE 3.04 WAIVER OF RIGHT TO COUNSEL

Subd. 1. Conditions of Waiver. The following provision does not apply to Juvenile Petty Offenses, which are governed by Rule 17. Any waiver of counsel must be made knowingly, intelligently, and voluntarily. Any waiver shall be in writing ~~and~~ or on the record. The child must be fully and effectively informed of the child's right to counsel and the disadvantages of self-representation by an in-person consultation with an attorney, and counsel

shall appear with the child in court and inform the court that such consultation has occurred. In determining whether a child has knowingly, voluntarily, and intelligently waived the right to counsel, the court shall look to the totality of the circumstances including, but not limited to: the child's age, maturity, intelligence, education, experience, ability to comprehend, and the presence of the child's parents, legal guardian, legal custodian or guardian ad litem. The court shall inquire to determine if the child has met privately with the attorney, and if the child understands the charges and proceedings, including the possible disposition, any collateral consequences, and any additional facts essential to a broad understanding of the case.

Subd. 2. Competency Proceedings. Any child subject to competency proceedings pursuant to Rule 20 shall not be permitted to waive counsel.

Subd. 23. Court Approval/Disapproval. If the court accepts the child's waiver, it shall state on the record the findings and conclusions that form the basis for its decision and shall appoint standby counsel as required by ~~Minnesota Rules of Juvenile Procedure~~ 3.02.

RULE 3.05 RENEWAL OF ADVISORY

After a child waives the right to counsel, the child shall be advised of the right to counsel by the court on the record, at the beginning of each hearing at which the child is not represented by counsel.

RULE 3.06 ELIGIBILITY FOR COURT APPOINTED COUNSEL AT PUBLIC EXPENSE [no proposed amendments]

RULE 3.07 RIGHT OF PARENT(S), LEGAL GUARDIAN(S), LEGAL CUSTODIAN(S) AND GUARDIAN AD LITEM TO COUNSEL [no proposed amendments to subdivision 1]

Subd. 2. Right of Guardian Ad Litem to Counsel. ~~The guardian ad litem of the child shall be represented by the child's counsel. However, in~~In the event of a conflict between the child and the guardian ad litem, ~~considered in the context of the matter, counsel for the child shall continue to represent the child. The~~the court may appoint separate counsel to represent the guardian ad litem.

RULE 3.08 CERTIFICATES OF REPRESENTATION [no proposed amendments]

Comment--Rule 3

Minn._R._Juv._P. 3 prescribes the general requirements for appointment of counsel for a juvenile. In re Gault, 387 U.S. 1 (1967); Minn._Stat. § ~~260.155, subd. 2 (1994)~~260B.163, subd. 4 (2000). The right to counsel at public expense does not necessarily include the right to representation by a public defender. The right to representation by a public defender is governed by Minnesota Statutes, chapter 611.

Minn._R._Juv._P. 3.01 provides that the right to counsel attaches no later than the child's first appearance in juvenile court. See Minn._Stat. § 611.262 (1994)2000. Whether counsel is appointed by the court or retained by the child or the child's parents, the attorney must act solely as counsel for the child. American Bar Association, Juvenile Justice Standards Relating to Counsel for Private Parties (1980). While it is certainly appropriate for an attorney representing a child to consult with the parents whose custodial interest in the child potentially may be affected by court intervention, it is essential that counsel conduct an initial interview with the child privately and outside of the presence of the parents. Following the initial private consultation, if the child affirmatively wants his or her parent(s) to be present, they may be present. The attorney may then consult with such other persons as the attorney deems necessary or appropriate. However, the child retains a right to consult privately with the attorney at any time, and either the child or the attorney may excuse the parents in order to speak privately and confidentially.

Minn._R._Juv._P. 3.02 provides for the appointment of counsel for juveniles in delinquency proceedings. A parent may not represent a child unless he or she is an attorney. In Gideon v. Wainwright, 372 U.S. 335 (1963), the U.S. Supreme Court held that the Sixth Amendment's guarantee of counsel applied to state felony criminal proceedings. In In re Gault, the Supreme Court extended to juveniles the constitutional right to counsel in state delinquency proceedings. Minn._Stat. § ~~260.155, subd. 2 (1994)~~260B.163, subd. 4 (2000) expands the right to counsel and requires that an attorney shall be appointed in any proceeding in which a child is charged with a felony or gross misdemeanor.

If a child in a felony or gross misdemeanor case exercises the right to proceed without counsel, Faretta v. California, 422 U.S. 806 (1975), State v. Richards, 456 N.W.2d 260 (Minn. 1990), then Minn._R._Juv._P. 3.02, subd. 1 requires the court to appoint standby counsel to assist and consult with the child at all stages of the proceedings. See, e.g., McKaskle v. Wiggins, 465 U.S.

168 (1984); State v. Jones, 266 N.W.2d 706 (Minn. 1978); Burt v. State, 256 N.W.2d 633 (Minn. 1977); State v. Graff, 510 N.W.2d 212 (Minn. Ct. App. 1993) pet. for rev. denied (Minn. Feb. 24, 1994); State v. Savior, 480 N.W.2d 693 (Minn. Ct. App. 1992); State v. Parson, 457 N.W.2d 261 (Minn. Ct. App. 1990) pet. for rev. denied (Minn. July 31, 1990); State v. Lande, 376 N.W.2d 483 (Minn. Ct. App. 1985) pet. for rev. denied (Minn. Jan. 17, 1986).

In McKaskle v. Wiggins, the Supreme Court concluded that appointment of standby counsel was consistent with a defendant's Faretta right to proceed pro se, so long as standby counsel did not stifle the defendant's ability to preserve actual control over the case and to maintain the appearance of pro se representation. The child must have an opportunity to consult with standby counsel during every stage of the proceedings. State v. Richards, 495 N.W.2d 187 (Minn. 1992). In order to vindicate this right, counsel must be physically present. "[I]t would be virtually impossible for a standby counsel to provide assistance, much less effective assistance, to a criminal client when that counsel has not been physically present during the taking of the testimony and all of the court proceedings that preceded the request ... [O]nce the trial court ... appoint[s] standby counsel, that standby counsel must be physically present in the courtroom from the time of appointment through all proceedings until the proceedings conclude." Parson, 457 N.W.2d at 263. Where the child proceeds pro se, it is the preferred practice for counsel to remain at the back of the courtroom and be available for consultation. Savior, 480 N.W.2d at 694-95; Parson, 457 N.W.2d at 263; Lande, 376 N.W.2d at 485. Moreover, standby counsel must be present at all bench and chambers conferences, even where the child is excluded. State v. Richards, 495 N.W.2d 187, 196 (Minn. 1992).

Minn. R. Juv. P. 3.02, subd. 2 requires a court to appoint counsel for a child charged with a misdemeanor unless that child affirmatively waives counsel as provided in Minn. R. Juv. P. 3.04. Minn. R. Juv. P. 3.02, subd. 3 requires the appointment of counsel or standby counsel in any proceeding in which out-of-home placement is proposed, and further limits those cases in which a child may waive the assistance of counsel without the appointment of standby counsel. In Argersinger v. Hamlin, 407 U.S. 25, 37 (1972), the Court held that "absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor or felony unless he was represented by counsel." In Scott v. Illinois, 440 U.S. 367 (1979), the Court clarified any ambiguity when it held that in misdemeanor proceedings, the sentence the trial judge actually imposed, i.e. whether incarceration was ordered, rather than the one authorized by the statute, determined whether counsel must be appointed for the indigent.

In State v. Borst, 278 Minn. 388, 154 N.W.2d 888 (1967), the Minnesota Supreme Court, using its inherent supervisory powers, anticipated the United States Supreme Court's Argersinger and Scott decisions, and shortly after Gideon, required the appointment of counsel even in misdemeanor cases "which may lead to incarceration in a penal institution." Id. at 397, 154 N.W.2d at 894. Accord City of St. Paul v. Whidby, 295 Minn. 129, 203 N.W.2d 823 (1972); State v. Collins, 278 Minn. 437, 154 N.W.2d 688 (1967); State v. Illingworth, 278 Minn. 687, 154 N.W.2d 687 (1967) (ordinance violation). The Borst Court relied, in part, upon Gault's ruling on the need for counsel in delinquency cases to expand the scope of the right to counsel for adult defendants in any misdemeanor or ordinance prosecutions that could result in confinement. 278 Minn. at 392-93, 154 N.W.2d at 891. Like the Court in Gault, Borst recognized the adversarial reality of even "minor" prosecutions.

At the very least, Minn._R._Juv._P. 3.02, subd. 3 places the prosecution and court on notice that out-of-home placement may not occur unless counsel or standby counsel is appointed. For example, a child appearing on a third alcohol offense faces a dispositional possibility of out-of-home placement, but cannot be placed out of the home if the child is not represented by counsel unless the child is given the opportunity to withdraw the plea or obtain a new trial. See Minn._R._Juv._P. ~~17.03, subd. 1(D)~~17.02. The prosecutor should indicate, either on the petition or through a statement on the record, whether out-of-home placement will be proposed. Obviously, basing the initial decision to appoint counsel on the eventual sentence poses severe practical and administrative problems. It may be very difficult for a judge to anticipate what the eventual sentence likely would be without prejudging the ~~defendant~~child or prejudicing the right to a fair and impartial trial. Minn._R._Juv._P. 3.02, subd. 3 also provides that a child retains an absolute right to withdraw any plea obtained without the assistance of counsel or to obtain a new trial if adjudicated ~~delinquent~~ without the assistance of counsel, if ~~those convictions~~that adjudication provides the underlying predicate for an out-of-home placement. See, e.g., In re D.S.S., 506 N.W.2d 650, 655 (Minn. Ct. App. 1993) ("The cumulative history of uncounseled admissions resulting after an inadequate advisory of the right to counsel constitutes a manifest injustice."). Appointing counsel solely at disposition is inadequate to assure the validity of the underlying offenses on which such placement is based. Of course, routine appointment of counsel in all cases would readily avoid any such dilemma.

~~Minn. Stat. § 260.015, subd. 21~~ 260B.007, subd. 16 defines "juvenile petty offenses," and converts most offenses that would be misdemeanors if committed by an adult into petty offenses. ~~Minn. Stat. § 260.015, subd. 21 (Supp. 1995); 1996 Minn. Laws Ch. 408, Art. 6, Sec. 1. Minn. R. Juv. P. 3.02, subd. 5 implements procedurally the legislative redefinition of misdemeanors and 17.02 explain when a juvenile petty offender is entitled to court-appointed counsel.~~ If a child is charged as a juvenile petty offender, the child or the child's parents may retain and be represented by private counsel, but the child does not have a right to the appointment of a public defender or other counsel at public expense. The denial of access to court-appointed counsel is based on the limited dispositions that the juvenile court may impose on juvenile petty offenders. ~~Minn. Stat. § 260.195, subd. 3 (Supp. 1995)~~ 260B.235, subd. 4 (Supp. 2001). However, children who are charged with a third or subsequent juvenile alcohol or controlled substance offense are subject to out-of-home placement and therefore have a right to court-appointed counsel, despite their status as juvenile petty offenders. If the court ~~seeks~~ is authorized to impose a disposition that includes out-of-home placement other than those authorized pursuant to Minn. Stat. § 260.195, subd. 3 (Supp. 1995), then the provisions of ~~Minn. R. Juv. P. 3.02, subd. 2 or subd. 3 may be~~ 5 and 17.02 are applicable and provide the child a right to counsel at public expense. ~~Where inpatient treatment is a possibility, as it is pursuant to Minn. Stat. § 260.195, subd. 4 (1994) for children who are found to have committed a third or subsequent juvenile alcohol or controlled substance offense, Minn. R. Juv. P. 3.02, subd. 3 provides a right to counsel at public expense even if the prosecuting attorney decides to designate the child a juvenile petty offender. See Minn. R. Juv. P. 17.03, subd. 1(D); 1996 Minn. Laws Ch. 408, Art. 6, Sec. 5. A child retains an absolute right to withdraw any plea obtained without the assistance of counsel or to obtain a new trial if adjudicated a petty offender without the assistance of counsel, if either provides the underlying predicate for an out of home placement. See, e.g., In re D.S.S., 506 N.W.2d 650, 655 (Minn. Ct. App. 1993).~~

Minn. R. Juv. P. 3.02, subd. 6 is an exception to the prohibition of appointment of counsel at public expense for a juvenile traffic or juvenile petty offender. If such a child is detained, ~~at least at the~~ any hearing to determine if continued detention is necessary, the child is entitled to court-appointed counsel if unrepresented because substantial liberty rights are at issue.

Minn. R. Juv. P. 3.02, subd. 7 is an exception to the prohibition of appointment of counsel at public expense for a juvenile traffic or juvenile petty offender. As soon as any child is alleged to be incompetent to proceed, that child has a right to be represented by an attorney at public expense for

the proceeding to determine whether the child is competent to proceed. Substantial liberty rights are at issue in a competency proceeding. A finding of incompetency is a basis for a Child in Need of Protection or Services adjudication and possible out-of-home placement. Minn. Stat. §§ 260C.007, subd. 6(15) and 260C.201. See also Rule 20.01. Because out-of-home placement is a possibility, the child is entitled to court-appointed counsel.

Minn._R._Juv._P. 3.03 regarding advising children of the perils of dual representation is patterned after Minn._R._Crim._P. 17.03, subd. 5.

Minn._R._Juv._P. 3.04 prescribes the circumstances under which a child charged with an offense may waive counsel. The validity of relinquishing a constitutional right is determined by assessing whether there was a "knowing, intelligent, and voluntary waiver" under the "totality of the circumstances." See, e.g., Fare v. Michael C., 442 U.S. 707 (1979); Johnson v. Zerbst, 304 U.S. 458 (1938) (waiver of counsel); In re M.D.S., 345 N.W.2d 723 (Minn. 1984); State v. Nunn, 297 N.W.2d 752 (Minn. 1980); In re L.R.B., 373 N.W.2d 334 (Minn. Ct. App. 1985). The judicial position that a young minor can "knowingly and intelligently" waive constitutional rights is consistent with the legislature's judgment that a youth can make an informed waiver decision without parental concurrence or consultation with an attorney. Minn._Stat. § ~~260.155, subd. 8~~ (1994) 260B.163, subd. 10 (2000) ("Waiver of any right ... must be an express waiver intelligently made by the child after the child has been fully and effectively informed of the right being waived:").

While recognizing a right to waive counsel and proceed pro se, Minn._R._Juv._P. 3.02 requires juvenile courts to appoint standby counsel to assist a child charged with a felony or gross misdemeanor, or where out-of-home placement is proposed, and to provide temporary counsel to consult with a child prior to any waiver in other types of cases. See, e.g., State v. Rubin, 409 N.W.2d 504, 506 (Minn. 1987) ("[A] trial court may not accept a guilty plea to a felony or gross misdemeanor charge made by an unrepresented defendant if the defendant has not consulted with counsel about waiving counsel and pleading guilty:"); Jones, 266 N.W.2d 706 (standby counsel available to and did consult with defendant throughout proceedings and participated occasionally on defendant's behalf); Burt, 256 N.W.2d at 635 ("One way for a trial court to help ensure that a defendant's waiver of counsel would be to provide a lawyer to consult with the defendant concerning is proposed waiver").

In State v. Rubin, the court described the type of "penetrating and comprehensive examination" that must precede a "knowing and intelligent" waiver and strongly recommended the appointment of counsel "to advise and consult with the defendant as to the waiver." See also ABA Standards of Criminal Justice, Providing Defense Services, § 5-7.3 (1980); Minn._R._Crim._P. 5.02. Minn._R._Juv._P. 3.04, subd. 1 prescribes the type of "penetrating and comprehensive examination" expected prior to finding a valid waiver. Prior to an initial waiver of counsel, a child must consult privately with an attorney who will describe the scope of the right to counsel and the disadvantages of self-representation. Following consultation with counsel, any waiver must be in writing and on the record, and counsel shall appear with the child to assure the court that private consultation and full discussion has occurred.

To determine whether a child "knowingly, intelligently, and voluntarily" waived the right to counsel, Minn._R._Juv._P. 3.04, subd. 1 requires the court to look at the "totality of the circumstances," which includes but is not limited to the child's age, maturity, intelligence, education, experience, and ability to comprehend and the presence and competence of the child's parent(s), legal guardian or legal custodian. In addition, the court shall decide whether the child understands the nature of the charges and the proceedings, the potential disposition that may be imposed, and that admissions or findings of delinquency may be valid even without the presence of counsel and may result in more severe sentences if the child re-offends and appears again in juvenile court or in criminal court. United States v. Nichols, — 511 U.S. — 738, 114 S.Ct. 1921 (1994); United States v. Johnson, 28 F.3d 151 (D.C._Cir._1994) (use of prior juvenile convictions to enhance adult sentence). The court shall make findings and conclusions on the record as to why it accepts the child's waiver or appoints standby counsel to assist a juvenile who purports to waive counsel.

Even though a child initially may waive counsel, the child continues to have the right to counsel at all further stages of the proceeding. Minn._R._Juv._P. 3.05 requires that at each subsequent court appearance at which a child appears without counsel, the court shall again determine on the record whether or not the child desires to exercise the right to counsel.

Minn._R._Juv._P. 3.06 prescribes the standard to be applied by the court in determining whether a child or the child's family is sufficiently indigent to require appointment of counsel. The standards and methods for determining eligibility are the same as those used in the Minn._R._Crim. P. 5.02, subds. 3-5.

Minn._R._Juv._P. 3.06, subd. 2 provides that if the parent(s) of a child can afford to retain counsel but have not done so and the child cannot otherwise afford to retain counsel, then the court shall appoint counsel for the child. When parents can afford to retain counsel but do not do so and counsel is appointed for the child at public expense, in the exercise of its sound discretion, the court may order reimbursement for the expenses and attorney's fees expended on behalf of the child. Minn._Stat. § ~~260.251, subd. 4 (1994)~~260B.331, subd. 5 (2000) ("[T]he court may inquire into the ability of the parents to pay for such counsel's services and, after giving the parents a reasonable opportunity to be heard, may order the parents to pay attorneys fees:"). See, e.g., In re M.S.M., 387 N.W.2d 194, 200 (Minn. Ct. App. 1986).

Minn._R._Juv._P. 3.07 implements the rights of a child's parent(s), legal guardian or legal custodian to participate in hearings affecting the child. After a child has been found to be delinquent and state intervention potentially may intrude upon the parent's custodial interests in the child, the parent(s) have an independent right to the assistance of counsel appointed at public expense if they are eligible for such services.

RULE 4. WARRANTS

RULE 4.01 ~~WARRANT FOR IMMEDIATE CUSTODY~~SEARCH WARRANTS UPON ORAL TESTIMONY

Issuance of search warrants based on oral testimony is governed by Minnesota Rules of Criminal Procedure 33.04 and 36, except as modified by this Rule. If the focus of the warrant pertains to a juvenile, the court may designate on the face of the warrant that it shall be filed in the juvenile court. When so designated, the original warrant, the duplicate original warrant, the certified transcript of the oral application for the warrant, any longhand verbatim record, and any related documents shall be deemed to be a juvenile court record under Rule 30.

RULE 4.02 SEARCH WARRANTS UPON WRITTEN APPLICATION

Issuance of search warrants based upon written application is governed by Minnesota Statutes, sections 626.04 through 626.18 and Minnesota Rules of Criminal Procedure 33.04, except as modified by this Rule. If the focus of the warrant pertains to a juvenile, the court may designate on the face of the warrant that it shall be filed in the juvenile court. When so designated, the search warrant, warrant application, affidavit(s) and inventories, including

statements of unsuccessful execution and documents required to be served shall be deemed to be a juvenile court record under Rule 30.

RULE 4.03 WARRANTS FOR IMMEDIATE CUSTODY

Subd. 1. Probable Cause Required. Probable cause may be established by facts set forth in writing attached to the charging document, by facts set forth in the charging document, by affidavit(s) attached to the charging document, or by sworn testimony presented to the court on the record.

Subd. 2. Warrant. The court may issue a warrant for immediate custody of a delinquent child or a child alleged to be delinquent if the court finds that there is probable cause to believe that:

~~(A)~~ the child has committed a delinquent act as defined by Minnesota Statutes § ~~260.015, subd. 5~~, section 260B.007, subdivision 6, and;

~~(B)~~(A) the child failed to appear after having been personally served with a summons or subpoena, or reasonable efforts to personally serve the child have failed, or there is a substantial likelihood that the child will fail to respond to a summons; or

~~(C)~~(B) the child or others are in danger of imminent harm; or

~~(D)~~(C) the child has left the custody of the detaining authority without permission of the court; or

~~(E)~~(D) the child has violated a court order; or

~~(F)~~(E) the child has violated the terms of probation.

Subd. 3. Warrant for Juvenile Petty or Traffic Offenses. The court may only issue a warrant for immediate custody of a juvenile petty or juvenile traffic offender or a child alleged to be a juvenile petty or juvenile traffic offender if the court finds that there is probable cause to believe that:

(A) the child has committed a juvenile petty offense as defined by Minnesota Statutes § ~~260.015, subd. 21~~, section 260B.007, subdivision 16 or a juvenile traffic offense as defined by Minnesota Statutes § ~~260.193~~, section 260B.225; and

(B) the child failed to appear after having been personally served with a summons or subpoena, ~~or~~ reasonable efforts to personally serve the child have failed, or there is a substantial likelihood that the child will fail to respond to a summons.

Subd. 4. Contents of Warrant for Immediate Custody. A warrant for immediate custody shall be signed by a judge and shall:

(A) order the child to be brought immediately before the court or the child to be taken to a detention facility designated by the court to be detained pending a detention hearing or the child to be transferred to an individual or agency, including but not limited to any welfare agency or hospital as the welfare of the child might require;

(B) state the name and address of the child, or if unknown, designate the child by any name or description by which the child can be identified with reasonable certainty;

(C) state the age and sex of the child, or, if the age of the child is unknown, that the child is believed to be of an age subject to the jurisdiction of the court;

(D) state the reasons why the child is being taken into custody;

(E) where applicable, state the reasons for a limitation on the time or location of the execution of the warrant; and

(F) state the date when issued, and the county and court where issued.

~~RULE 4.02 EXECUTION OF WARRANT FOR IMMEDIATE CUSTODY~~

Subd. 15. Who May Execute. The warrant for immediate custody may only be executed by a peace officer authorized by law to execute a warrant.

Subd. 26. How Executed. The warrant for immediate custody shall be executed by taking the child into custody.

Subd. 37. Where Executed. The warrant for immediate custody may be executed at any place in the state except where prohibited by law, unless the judge who issues the warrant limits in writing on the warrant the location where the warrant may be executed.

Subd. 48. When Executed. A warrant may be executed at any time unless the judge who issues the warrant limits in writing on the warrant the time during which the warrant may be executed. If the offense is a misdemeanor, petty offense or juvenile traffic offense, the child may not be taken into custody on Sunday or between the hours of 10:00 o'clock p.m. and 8:00 o'clock a.m. on any other day except by direction of the judge, ~~endorsed on the warrant when exigent circumstances exist, or when the child named in the warrant is found on a public highway or street.~~

Subd. 59. Possession of Warrant. A warrant for immediate custody need not be in the peace officer's possession at the time the child is taken into custody.

Subd. 610. Advisory. When a warrant is executed, the child and the child's parent(s), legal guardian or legal custodian, if present, shall immediately be informed of the existence of the warrant for immediate custody and as soon as possible of the reasons why the child is being taken into custody.

Comment--Rule 4

If the child fails to appear in response to a summons without reasonable cause, then the court may issue a warrant to take the child into immediate custody pursuant to Minn. R. Juv. P. ~~4.014.01~~, subd. 1. See Minn. Stat. § ~~260.145 (1994)~~260B.154 (2000). Probable cause is required for every warrant issued. Before the court may issue a warrant, it shall make a finding of probable cause based on the contents of the petition, any supporting affidavits or sworn supplemental testimony to believe that the child committed an act governed by Minn. Stat. § ~~260.015, subd. 5; subd. 21;~~260B.007, subds. 6 or 16, or Minn. Stat. § ~~260.193~~260B.225. In addition, the court must also find either that the summons was personally served on the child and the child failed to appear, that service will be ineffectual, or, for a delinquent child or child alleged to be delinquent, that there is a substantial likelihood that the child will not respond to a summons, or that the child or others are in danger of imminent harm. Minn. Stat. § ~~260.145 (1994)~~260B.154 (2000); ~~Minn. Stat. § 260.135, subd. 5 (1994)~~.

Minn. R. Juv. P. ~~4.014.03~~, subd. 2 prescribes the contents of the warrant. When a child is taken into custody, a detention hearing shall commence pursuant to Minn. R. Juv. P. 5.07 within thirty-six (36) hours, excluding Saturdays, Sundays, and holidays, or within twenty-four hours, excluding Saturdays, Sundays, and holidays, if the child is detained in an adult jail or municipal lockup.

Under Minn. R. Juv. P. ~~4.024.03~~, subd. 5, a warrant may be executed only by a peace officer. Limitations on the manner of execution are the same as those set out in Minn. R. Crim. P. 3.03, subd. 3 for adults where the offense charged is a misdemeanor or non-criminal offense. The minor nature of misdemeanors, juvenile petty and juvenile traffic offenses should not ordinarily justify taking a child into immediate custody during the proscribed period of time.

RULE 5. DETENTION

RULE 5.01 SCOPE AND GENERAL PRINCIPLES

~~Minnesota Rules of Juvenile Procedure~~ 5 governs all physical liberty restrictions placed upon a child before trial, disposition, or pending a probation violation hearing. For purposes of this Rule, the day of the act or event from which the designated period of time begins to run shall be included.

RULE 5.02 DEFINITIONS [no proposed amendments to subdivision 2]

Subd. 1. Detention. Detention includes all liberty restrictions that substantially affect a child's physical freedom or living arrangements before trial, disposition or pending a probation violation hearing. A child's physical liberty is restricted when:

- (A) the child is taken into custody;
- (B) the court orders detention of the child; ~~or~~
- (C) the court orders ~~conditions of release such as out-of-home placement, home detention, electronic monitoring or other physical limitations; or~~
- (D) the court orders electronic home monitoring or house arrest with substantial liberty restrictions.

Subd. 3. Place of Detention. A place of detention can be any one of the following places:

- (A) the child's home subject to electronic home monitoring, or house arrest ~~or other physical~~ with substantial liberty restrictions;
- (B) a foster care or shelter care facility;
- (C) a secure detention facility;
- (D) a detoxification, chemical dependency, or psychiatric facility;
- (E) an adult jail; or
- (F) any other place of detention.

RULE 5.03 DETENTION DECISION [no proposed amendments to subdivisions 1, 2 and 4]

Subd. 3. Discretion to Release Even if One or More Factors are Met. Even if a child meets one or more of the factors in ~~Minnesota Rules of Juvenile Procedure 5.04, subd. 5.03,~~ subdivisions 1 and 2, the detaining authority has broad discretion to release that child before the detention hearing if other less restrictive measures would be adequate.

RULE 5.04 RELEASE OR CONTINUED DETENTION [no proposed amendments to subdivision 6]

Subd. 1. For Child Taken Into Custody Pursuant to Court Order or Warrant.

(A) *Detention Required.* Unless the court orders an earlier release, the child ~~shall~~may be detained for thirty-six (36) hours after being taken into custody, excluding Saturdays, Sundays and holidays.

(B) *When Release is Mandatory.* Unless the time for the detention hearing is extended by twenty-four (24) hours pursuant to ~~Minnesota Rules of Juvenile Procedure 5.07, subd.~~subdivision 7, the child shall be released no later than thirty-six (36) hours after being taken into custody, excluding Saturdays, Sundays and holidays, unless the court orders continued detention following a detention hearing commenced within that ~~thirty-six (36) hour~~time period.

Subd. 2. For Child Taken Into Custody Without a Court Order or Warrant.

(A) *Exception Permitting Detention.* The officer taking a child into custody without a court order or warrant shall release the child unless the officer reasonably believes, after consideration of the factors set out in ~~Minnesota Rules of Juvenile Procedure 5.03, that:~~

- (1) the child would endanger self or others;
- (2) the child would not appear for a court hearing;
- (3) the child would not remain in the care or control of the person into whose lawful custody the child is released; or
- (4) the child's health or welfare would be immediately endangered.

There is a presumption that a child will not appear for a court hearing when the person to whom the child is to be released refuses to sign a written promise to bring the child to court.

(B) *Discretionary Release Any Time Before Detention Hearing.* The detaining authority has discretion to release a child any time before the detention hearing if other less restrictive measures would be adequate.

(C) *When Release is Mandatory.* Unless the time for the detention hearing is extended by twenty-four (24) hours pursuant to ~~Minnesota Rules of Juvenile Procedure 5.07, subd.~~subdivision 7, the child shall be released no later than thirty-six (36) hours after being taken into custody, excluding Saturdays, Sundays and holidays, unless the court orders continued detention following a detention hearing commenced within that ~~thirty-six (36) hour~~time period.

Subd. 3. Child Taken Into Custody and Placed in an Adult Jail or Municipal Lockup.

(A) *Generally.* The child shall be released no later than twenty-four (24) hours after being taken into custody, excluding Saturdays, Sundays and legal holidays, unless within that ~~twenty-four (24) hour~~time period, a ~~delinquency petition and a motion for certification to adult court~~charging document has been filed with the court and the court has determined at a detention hearing that the child shall remain detained. If the court's decision at the detention hearing is that the child shall remain detained, the child shall be detained at an appropriate juvenile facility. The court may extend the time for a detention hearing for good cause pursuant to ~~Minnesota Rules of Juvenile Procedure 5.07, subd. subdivision~~ 7 only if a ~~delinquency petition and a motion for certification to adult court~~charging document has been filed with the court within twenty-four (24) hours of the child being taken into custody, excluding Saturdays, Sundays and legal holidays.

(B) *Adult Jail or Municipal Lockup in a Standard Metropolitan Statistical Area.* If the jail or municipal lockup is in a standard metropolitan statistical area, the child shall be held no longer than six (6) hours after the child was taken into custody including Saturdays, Sundays and holidays unless a ~~delinquency petition and a motion for certification to adult court~~charging document has been filed with the court within that ~~six (6) hour~~time period and the court has determined after a detention hearing that the child shall remain detained. If the court's decision at the detention hearing is that the child shall remain detained, the child shall be detained at an appropriate juvenile facility. The time for a detention hearing shall not be extended.

Subd. 4. Probable Cause Determination.

(A) *Time Limit.* The child shall be released no later than forty-eight (48) hours after being taken into custody without a court order or warrant signed by a judge, including the day the child was detained, Saturdays, Sundays and legal holidays, unless the court determines there is probable cause to believe the child committed the offense(s) alleged.

(B) *Application and Record.* The facts establishing probable cause to believe the offense(s) was committed and that the child committed the offense(s) shall be presented to the judge upon oath, either orally or in writing. Oral testimony shall be recorded and retained by the judge. Written facts may be presented to the judge by telephone, facsimile, video, or other similar device. If probable cause is determined on written facts and the judge is not personally present to sign the determination, the document shall be presented to the judge for signature within two (2) business

days. The judge shall be advised if a prior request for a probable cause determination was made and turned down relative to the same incident.

(C) *Approval of Prosecuting Attorney.* No request for a probable cause determination may proceed without approval by the prosecuting attorney. The person requesting the probable cause determination shall, under oath, state that the prosecutor approves the request. If the prosecutor is unavailable, the court may make the probable cause determination if the matter should not be delayed.

(D) *Determination.* After the information is presented, the court shall determine whether there is probable cause to believe an offense(s) was committed and that the child committed the offense(s). If probable cause is found, the court may order continued detention pursuant to ~~Minnesota Rules of Juvenile Procedure 5,~~ and release the child with conditions or with no conditions. A written determination of probable cause shall be filed with the court and a copy provided to the child and child's counsel.

Subd. 5. Release of Any Child at Any Time by the Court and Conditions of Release.

Only the court may impose conditions of release. The court at any time may release a child and may impose one or more of the following conditions:

(A) require the parent(s), legal guardian, legal custodian or child to post bail;

(B) place restrictions on the child's travel, associations or place of abode during the period of the child's release; or

(C) electronic home monitoring or any other conditions deemed reasonably necessary and consistent with factors for detaining the child.

Unless the time for the detention hearing is extended by twenty-four (24) hours pursuant to ~~Minnesota Rules of Juvenile Procedure 5.07,~~ subd. subdivision 7, all conditions of release which restrict the physical liberty of a child terminate after thirty-six (36) hours excluding Saturdays, Sundays and legal holidays unless a detention hearing has commenced and the court has ordered continued detention.

RULE 5.05 DETENTION REPORTS

Subd. 1. Report by Detaining Authority. When a child has been detained, the detaining officer or his agent shall file a signed report with the court and deliver a copy to the supervisor of the facility containing the following information:

(A) the time the child was taken into custody and the reasons why the child was taken into custody;

(B) the time the child was delivered to the place of detention and the reasons why the child is being held there;

(C) a statement that the child and the child's parent(s), legal guardian or legal custodian have received the notification required by Minnesota Statutes ~~§ 260.171, subs. 4 and 5a, section 260B.176, subdivisions 3 and 5~~, including the advisory that every child at a detention hearing has a right to counsel at public expense pursuant to ~~Minnesota Rules of Juvenile Procedure 3.02, subd. subdivision~~ 6, and the time such notification was given to each or the efforts made to notify them.

Subd. 2. Report by Supervisor of the Secure Detention Facility or Shelter Care Facility. When a child has been delivered to a secure detention facility or shelter care facility, the supervisor of the facility shall file with the court a signed report acknowledging receipt of the child and containing a statement that the child and the child's parent(s), legal guardian or legal custodian have received the notification required by Minnesota Statutes ~~§ 260.171, subs. 4 and 5a, section 260B.176, subdivisions 3 and 5~~ and the time such notification was given to each or the efforts made to notify them.

Subd. 3. Timing of Reports. The reports shall be filed with the court on or before the court day following detention of the child or by the time ~~or~~ of the detention hearing, whichever is earlier.

Subd. 4. Notice to ~~Defense~~Child's Counsel; ~~Defense~~Child's Counsel Access to Child and Reports. If a child is detained pending a detention hearing in a place of detention other than home detention or at home on electronic home monitoring, the court administrator shall give the Office of the Public Defender or the child's attorney, if privately retained, notice that the child is in custody, notice of the detention hearing and provide copies of the reports filed with the court by the detaining officer and the supervisor of the place of detention. ~~Defense~~Child's counsel shall have immediate and continuing access to the child.

RULE 5.06 IDENTIFICATION PROCEDURES

Subd. 1. Photographing.

(A) *Generally.* A detained child may be photographed when the child is taken into custody in accordance with the laws relating to arrests. All children in custody alleged to have committed a felony or gross misdemeanor shall be photographed without court order.

(B) *Report.* A report stating the name of the child photographed and the date the photograph was taken shall be filed with the court.

Subd. 2. Fingerprinting.

(A) *Generally.* All children in custody alleged to have committed a felony ~~may~~ gross misdemeanor shall be fingerprinted without court order. Otherwise, a court order is required pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 10.

(B) *Report.* A report stating the name of the child fingerprinted and the date of the fingerprinting shall be filed with the court.

Subd. 3. Line-Up.

(A) *Generally.* A detained child may be placed in a line-up. A child may choose not to participate in a line-up which is not related to the matter for which the child is detained unless ordered by the court to appear in a line-up pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 10.05, ~~subd.~~ subdivision 2(A).

(B) *Right to Counsel During Line-Up for Child Alleged to be Delinquent.* A child has the right to have counsel present when placed in a line-up related to a delinquent act for which the child has been taken into custody unless exigent circumstances exist such that providing counsel would unduly interfere with a prompt investigation of the crime. When a delinquency petition has been filed, counsel for the child shall be present for any line-up. Any identification evidence obtained without the presence of counsel shall be inadmissible, unless the line-up occurred before the filing of the petition and exigent circumstances existed preventing the presence of counsel.

(C) *Report.* A report stating the name of the children who participated in the line-up and the date of the line-up shall be filed with the court.

RULE 5.07 DETENTION HEARING [no proposed amendments to subdivisions 3, 4, and 7]

Subd. 1. Time and Filing. ~~The~~ For a child detained in a secure juvenile detention facility or shelter care facility, the court shall commence a detention hearing within thirty-six (36) hours of the

time the child being was taken into custody, excluding Saturdays, Sundays, and holidays, unless a charging document has been filed and the judge or referee determines pursuant to Minnesota Statutes, section 260B.178 that the child shall remain in detention. For a child detained in an adult jail or municipal lockup, the court shall commence a detention hearing within twenty-four (24) hours of the time the child was taken into custody, excluding Saturdays, Sundays, and holidays, or within six (6) hours of the time the child was taken into custody if the child is detained in an adult jail or municipal lockup in a standard metropolitan statistical area, including Saturdays, Sundays, and holidays, unless a charging document has been filed and the judge or referee determines pursuant to Minnesota Statutes, section 260B.178 that the child shall remain in detention.

The following documents shall be filed with the court before the detention hearing:

- (A) a report or reports that the child is being held in detention filed pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 5.05; and
- (B) a charging document with probable cause.

Subd. 2. Notice.

(A) *Child, Child's Counsel, Prosecuting Attorney, Child's Parent(s), Legal Guardian or Legal Custodian and Spouse of the Child.* The court shall inform the child, the child's counsel, the prosecuting attorney, the child's parent(s), legal guardian or legal custodian and spouse of the child of the time and place of the detention hearing pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 25. Failure to inform the parent(s), legal guardian or legal custodian or spouse of the child or their absence at the hearing shall not prevent the hearing from being conducted or invalidate an order of detention.

(B) *Victim.* If a detained child is charged with a crime of violence against a person or attempting a crime of violence against a person, the court administrator shall make reasonable and good faith efforts to notify the victim of the alleged crime of

- (1) the time and place of the detention hearing;
- (2) the name and telephone number of a person that can be contacted for additional information; and
- (3) the right of the victim and victim's family to attend the detention hearing.

If the victim is incapacitated or deceased, notice must be given to the victim's family. If the victim is a minor, notice must be given to the victim's parent, legal guardian or legal custodian.

Subd. 5. Findings Necessary for Continued Detention. A court may detain a child beyond ~~thirty six (36)~~the time set in subdivision 1 of this rule if, after a hearing, the court finds:

(A) probable cause to believe the child committed the offense(s) alleged pursuant to ~~Minnesota Rules of Juvenile Procedure 5.04, subd. subdivision~~ 4; and

(B) there is reason to believe that if the child were released, after consideration of the factors set forth in ~~Minnesota Rules of Juvenile Procedure 5.03~~, that:

(1) the child would endanger self or others; or

(2) the child would not appear for a court hearing; or

(3) the child would not remain in the care or control of the person into whose lawful custody the child is released; or

(4) the child's health or welfare would be immediately endangered.

There is a presumption that a child will not appear for a court hearing when the person to whom the child is to be released refuses to sign a written promise to bring the child to court.

Subd. 6. Order.

(A) *Release.* The child shall be released if the findings required by ~~Minnesota Rules of Juvenile Procedure 5.07, subd. subdivision~~ 5 are not made.

(B) *Detention.* If the findings required by ~~Minnesota Rules of Juvenile Procedure 5.07, subd. subdivision~~ 5 are made, the court may order continued detention or release with the posting of bail or bond and other conditions deemed appropriate by the court.

(C) *Notice of Next Hearing.* On the record, the court shall advise all persons present of the date, time, and place of the next hearing. If persons entitled to participate at the next hearing are not present, the court shall provide those persons with notification of the next hearing by written notice of hearing. If the child is released, the child may be required to sign a promise to appear.

RULE 5.08 DETENTION REVIEW

Subd. 1. Informal Review. An informal review of detention shall be made by the court every eight (8) days, excluding Saturdays, Sundays and holidays, of the child's detention. If the circumstances justifying detention have not changed, detention may be continued. If the circumstances justifying detention have changed, detention may be modified with consent of the child, child's counsel, and the prosecuting attorney.

Subd. 2. Formal Review. The court may schedule a formal review of detention at any time.

(A) *Request by Child, Child's Counsel or Prosecuting Attorney.* If the court finds a substantial basis exists for the request to schedule a hearing to review detention, a hearing shall be scheduled as soon as possible, and at least within eight (8) days of the request.

(B) *Notice.* The person requesting a formal review shall make the request by motion as provided in ~~Minnesota Rules of Juvenile Procedure~~ 27.

(C) *Relevant Evidence.* Subject to constitutional limitations and privileged communications, the court may admit any evidence, including reliable hearsay and opinion evidence that is relevant to the decision regarding continued detention of the child.

(D) *Continued Detention.* The court may continue the child in detention if the court makes findings pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 5.07, ~~subd.~~subdivision 5.

Comment--Rule 5

~~Two general principles underlie Minn. R. Juv. P. 5: 1) there~~There is a presumption in favor of releasing an accused child unconditionally, ~~and 2) where~~If the child cannot be released unconditionally, the least restrictive liberty restriction is favored. The American Bar Association's Juvenile Justice Standards Relating to Interim Status: The Release Control, and Detention of Accused Juvenile Offenders Between Arrest and Disposition (1980) describes the general principles governing liberty restrictions. These general principles and policy considerations do not determine the outcomes of specific cases. Rather, they provide the process framework within which law enforcement and intake personnel, prosecuting attorneys and judges decide individual cases. When these decision makers decide whether or not to place a child in detention or to impose other physical liberty restrictions, the following policy considerations apply: to the greatest extent possible, any interim liberty restrictions should respect the autonomy interests of the accused child and family, ensure equality of treatment by race, class, ethnicity, and sex, ensure the child promptly receives access and continuing access to legal assistance, protect the child's access to education to the extent reasonably possible, and ensure public safety.

The primary concern of this rule is a child's physical liberty and living arrangements pending trial and disposition. For purposes of this rule, other non-physical limitations on a child's autonomy, such as a court order to avoid contact with victims or witnesses, to attend school, to

remain under the control of parents or custodians, or the like, do not constitute liberty restrictions that invoke either the procedures of this rule or the expedited timing of procedures for youths physically detained or restricted.

~~Minn.Stat. § 260.135, subd. 5 (1994) authorizes the officer serving a summons with a judicial endorsement to take into immediate custody a child whose health or safety is endangered.~~ Minn.Stat. § ~~260.145 (1994)~~260B.154 (2000) authorizes the court to issue a warrant for immediate custody for a child who fails to appear in court in response to a summons. Minn.Stat. § ~~260.165(1994)~~ 260B.175 (2000) authorizes a child to be taken into custody: 1) when the child has failed to obey a summons or subpoena; 2) pursuant to the laws of arrest, or a peace officer to apprehend a child who has run away or who is found in circumstances that endanger the child's health or safety; or 3) by a peace officer or probation or parole officer when it is reasonably believed that the child has violated the terms of probation, parole, or other field supervision. Minn.R.Juv.P. 5.07 defines the circumstances under which a child is subject to continuing physical restraints. Minn.Stat. § ~~260.172 (1994)~~260B.176 (2000) authorizes a detention hearing and provides the statutory framework that governs this rule.

Minn.R.Juv.P. 5.02, subd. 3 defines the places in which a child's liberty is restricted. A child's liberty is restricted when the child is placed at home, but his or her physical mobility is limited by electronic home monitoring, or house arrest, or other physical with substantial liberty restrictions. In addition, the provisions of this rule apply whenever, prior to disposition, the child is placed outside of the home, whether or not the placement is in a secure facility. Thus, a child's liberty is restricted when placed in a foster care (Minn.Stat. § ~~260.015, subd. 7 (1994)~~260B.007, subd. 7 (2000)) or shelter care facility (Minn.Stat. § ~~260.015, subd. 17 (1994)~~260B.007, subd. 15 (2000)), in a detoxification or mental health treatment facility, in a secure detention facility (Minn.Stat. § ~~260.015, subd. 16 (1994)~~260B.007, subd. 14 (2000)), in an adult jail or lock-up, or other place of detention. A child who is returned to an out-of-home placement which was made voluntarily or pursuant to a CHIPS proceeding is not "detained" for the purposes of this rule.

Minn.R.Juv.P. 5.03, subd. 1 establishes a general presumption in favor of unconditional release for all children taken into custody. Minn.R.Juv.P. 5.03, subd. 2 provides some non-exclusive evidentiary guidelines by which detaining authorities can decide whether a child meets the criteria for detention. Under Minn.R.Juv.P. 5.03, subd. 2, the detaining authority may detain a child if it believes or the court finds that the child poses a danger to other people because the child is

charged with a presumptive commitment to prison offense. The presumptive commitment to prison offenses are enumerated under Section V, Offense Severity Reference Table of the Minnesota Sentencing Guidelines. In addition, an inference the child poses a danger to others applies when the child uses a firearm in the commission of a felony pursuant to Minn. Stat. § ~~260.125, subd. 2a and 2b~~ (1995) 260B.125, subds. 3 and 4 (2000). However, detaining authorities should exercise individualized discretion ~~and not automatically detain all children charged with certain offenses.~~ Moreover, detaining authorities ought not detain children who meet the evidentiary criteria if other, less restrictive alternatives would assure the child's subsequent court appearance, welfare, and public safety. The non-exclusive evidentiary criteria emphasize objective indicators that the child poses a danger to self or others, or would fail to return for court appearances. The list of criteria set out in Minn. R. Juv. P. 5.03, subd. 2 are examples of factors which may justify pretrial detention. If a detained child does not meet any of the enumerated criteria, the detaining authority may justify detention only if a written report is filed stating objective and articulable reasons for detention. Minn. R. Juv. P. 5.03, subd. 2.

Minn. R. Juv. P. 5.03 governs the initial custody decisions affecting a juvenile by the police, detention and court intake personnel, and the prosecuting attorney. Minn. R. Juv. P. 5.04, subd. 1 governs the liberty restrictions on a child taken into custody pursuant to a court order or warrant. Minn. R. Juv. P. 5.04, subd. 2 governs the liberty restrictions of a child taken into custody by a peace officer or other person, and then brought to a detention facility or other place of custody.

Minn. R. Juv. P. 5.04, subd. 3 is based upon ~~1996 Minn. Laws Ch. 408, Art. 6, Sec. 7, which amends Minn. Stat. § 260.171, subd. 2~~ Minn. Stat. § 260B.176, subd. 2 (2000). The statute, ~~as amended,~~ provides for an extension of the time for a detention hearing for a child detained in an adult detention facility outside of a standard metropolitan statistical area county only under two circumstances: 1) where the adult facility in which the child is detained is located where conditions of distance to be traveled or other ground transportation do not allow for court appearances within 24 hours (with the delay not to exceed 48 hours); and 2) where "conditions of safety exist" including adverse life-threatening weather conditions which do not allow for reasonably safe travel. The time for appearance may be delayed until 24 hours after the time that conditions allow for reasonably safe travel. ~~1996 Minn. Laws Ch. 408, Art. 6, Sec. 7~~ Minn. Stat. § 260B.176, subd. 2 (2000). See also 42 U.S.C.A. § 5633(a)(13) and (14) (1995). Even though the statute permits an extension of the time for a detention hearing in such circumstances, the extension may be granted only if the

prosecuting attorney has filed a delinquency petition and a motion for certification within twenty-four (24) hours of the child being taken into custody, excluding Saturdays, Sundays and legal holidays. Minn._R._Juv._P. 5.04, subd. 3(A). If the court determines after the detention hearing that the child should remain detained, the child shall be detained in an appropriate juvenile facility. Id.; See also 42 U.S.C.A. § 5633(a)(14) (1995).

Minn._R._Juv._P. 5.04, subd. 4 is based upon Minn._R._Crim._P. 4.03. Under Minn._R._Juv._P. 5.04, subd. 4, if a child arrested without a warrant is not released by law enforcement, court intake, the court, or the prosecuting attorney, then a judge or judicial officer must make a probable cause determination without unnecessary delay and in any event within forty-eight (48) hours from the time of the arrest including the day of arrest, Saturdays, Sundays, and legal holidays. If the Court determines that probable cause does not exist or if there is no determination as to probable cause within the time as provided by this rule, the person shall be released immediately. County of Riverside v. McLaughlin, 500 U.S. 44, 111 S.Ct. 1661, 114 L.Ed.2d 49 (1991), requires a prompt judicial determination of probable cause following a warrantless arrest. That determination must occur without unreasonable delay and in no event later than forty-eight (48) hours after the arrest. There are no exclusions in computing the forty-eight-hour time limit. Even a probable cause determination within forty-eight (48) hours will be too late if there has been unreasonable delay in obtaining the determination. "Examples of unreasonable delays are delays for the purpose of gathering additional evidence to justify the arrest, a delay motivated by ill will against the arrested individual or delay for delay's sake." County of Riverside v. McLaughlin, 500 U.S. 44, 64, 111 S.Ct. 1661, 1670, 114 L.Ed.2d 49 (1991). The requirements of Minn._R._Juv._P. 5.04, subd. 4 are in addition to the requirement that a child arrested without a warrant must receive a detention hearing within thirty-six (36) hours after the arrest, exclusive of ~~the day of arrest~~, Saturdays, Sundays, and legal holidays. Because of the exclusion permitted in computing time under the "36-hour rule," compliance with that rule will not necessarily assure compliance with the "48-hour rule". The "48-hour rule" also applies to all misdemeanor cases.

Minn._R._Juv._P. 5.05, subd. 4 requires the court administrator to notify the office of the Public Defender that a child is in custody and the time of the detention hearing and to provide facsimile copies of all reports transmitted to the court. If a specific attorney has been assigned to represent the child, that attorney should receive notice. In jurisdictions where public defenders

rotate, notice to the chief public defender would be sufficient. Minnesota data privacy laws do not restrict notification of counsel of a child's detention prior to the first appearance in court and appointment of counsel. The rules of professional responsibility and attorney client privilege adequately protect the privacy of the child.

Minn._R._Juv._P. 5.06, subd. 1 implements the provision of Minn._Stat. § ~~260.161, subd. 3(e)(Supp. 1995)~~299C.10 (Supp. 2001), which ~~authorizes~~requires peace officers to take the fingerprints and photograph of a child taken into custody according to the laws of arrest, pursuant to Minn._Stat. § ~~260.165, subd.1(b)(1994)~~260B.175, subd. 1(b) (2000). Any photograph taken of a child must be destroyed when the child reaches the age of 19 years. Minn. Stat. § 260B.171, subd. 5(c) (2000). Minn._R._Juv._P. 5.06, subd. 2 implements the provisions of Minn._Stat. § 299C.10 (Supp.~~1995~~ 2001), which ~~authorizes~~requires law enforcement personnel to take the fingerprints of all juveniles ~~committing felonies~~arrested or charged with felony- or gross misdemeanor-level offenses.

Minn._R._Juv._P. 5.06, subd. 3 implements the policies of U.S. v. Wade, 388 U.S. 218 (1967) to provide the assistance of counsel to minimize the dangers of erroneous misidentification. See Feld, "Criminalizing Juvenile Justice: Rules of Procedure for the Juvenile Court," 62 Minn. L. Rev. 141, 209-16 (1984). Unlike the formalistic limitations imposed by Kirby v. Illinois, 406 U.S. 682 (1972), the rule recognizes that the dangers of unreliability, suggestibility, and error are inherent in all identification procedures. The rule attempts to balance the protection of a child from prejudicial misidentification with the State's interest in prompt investigation. A child who is in custody is entitled to have counsel present at a lineup, even prior to the filing of a delinquency petition, unless exigent circumstances exist and delay to provide counsel would unduly interfere with an expeditious investigation. Blue v. State, 558 P.2d 636 (Alaska 1977); People v. Jackson, 391 Mich. 323, 217 N.W.2d 22 (Mich. 1974) overruled on other grounds by McDougall v. Schanz, 461 Mich. 15, 597 N.W.2d 148 (1999); Commonwealth v. Richman, 238 Pa. Super. 413, 357 A.2d 585 (1976). Once an investigation proceeds beyond an immediate on-the-scene show-up, and especially once the child is in custody, there are no compelling law enforcement exigencies that offset the dangers of prejudice to the child. Since youth in custody already have a Miranda right to counsel, 384 U.S. 436 (1966), the delay involved in securing counsel will be a matter of hours at most and if conditions require immediate identification without even minimal delay or if counsel cannot be

present within reasonable time, such existent circumstances will justify proceeding without counsel. People v. Bustamante, 30 Cal 3d 88, 634 P.2d 927 (Cal. 1981).

Minn. R. Juv. P. 5.07 implements Minn. Stat. § 629.725 (~~Supp. 19952000~~) by providing that, in addition to giving notice to the child, child's counsel, prosecuting attorney, child's parent(s), legal guardian or legal custodian and spouse of the child, the court administrator must make a reasonable and good faith effort to give notice of the time and place of the detention hearing to the victim if the child is charged with a crime of violence against a person or attempting a crime of violence against a person. If the victim is deceased or incapacitated, the victim's family must receive notice. If the victim is a minor, the victim's parent or guardian must receive notice. Minn. Stat. § 629.725 (~~Supp. 19952000~~). "Crime of violence" has the meaning given it in Minn. Stat. § 624.712, subd. 5 (~~Supp. 19952000~~), and also includes Minn. Stat. § 609.21, gross misdemeanor violations of Minn. Stat. § 609.224 (~~Supp. 19952001~~), and nonfelony violations of Minn. Stat. §§ 518B.01 (2000 & Supp. 19952001), 609.2231 (~~19942000~~), 609.3451 (~~Supp. 19952000~~), 609.748 (2000 & Supp. 19952001), and 609.749 (2000 & Supp. 19952001). Id.

RULE 6. CHARGING DOCUMENT

RULE 6.01 GENERALLY [no proposed amendments]

RULE 6.02 TAB CHARGE OR CITATION [no proposed amendments to subdivisions 2 and 3]

Subd. 1. Generally. Juvenile petty offenses as defined by Minnesota Statutes ~~§ 260.015, subd. 21, section 260B.007, subdivision 16,~~ misdemeanors, juvenile traffic offenses and gross misdemeanors under Minnesota Statutes ~~§ 169.121, chapter 169A~~ may be charged by tab charge or citation. Before entering a plea of guilty or not guilty to alleged misdemeanor or gross misdemeanor charge(s), the child may demand that a petition be filed with the court. If a petition is demanded, the prosecuting attorney shall have thirty (30) days to file the petition unless the child is in custody. The prosecuting attorney shall have ten (10) days to file a petition if a demand is made by a child in custody or the child shall be released.

Subd. 4. Notice of Court Appearance. When a tab charge or citation is filed with the court, the court administrator shall promptly schedule the matter for hearing and send notices as provided by ~~Minnesota Rules of Juvenile Procedure 25.~~

RULE 6.03 PETITION [no proposed amendments to subdivisions 2, 3, 4, and 5]

Subd. 1. Generally. A child alleged to be delinquent because of a felony or gross misdemeanor offense (except gross misdemeanors under Minnesota Statutes ~~§ 169.121, chapter 169A~~, which may be charged by tab charge or citation) shall be charged by petition. A child alleged to be delinquent because of a misdemeanor offense may be charged by petition. A child charged with a juvenile petty offense or a juvenile traffic offense may be charged by petition.

RULE 6.04 AMENDMENT [no proposed amendments]

RULE 6.05 PROBABLE CAUSE [no proposed amendments to subdivisions 1 and 3]

Subd. 2. When Required. There must be a finding of probable cause:

(A) before the court may issue a warrant pursuant to ~~Minnesota Rules of Juvenile Procedure 4~~;

(B) before a detention hearing is held for a child taken into custody without a warrant;

(C) within ten (10) days of a court order directing the prosecuting attorney to establish probable cause on the charge(s) alleged in a petition. The court for any reason may order the prosecutor to show probable cause and the court shall order the prosecutor to show probable cause on demand of the child; or

(D) when competency of the child has been challenged.

RULE 6.06 PROCEDURE ON FILING A CHARGING DOCUMENT WITH THE COURT

Subd. 1. Dismissal. The court shall dismiss a charging document if it does not allege an act of delinquency as defined by Minnesota Statutes ~~§ 260.015, subd. 5~~, section 260B.007, subdivision 6, a juvenile petty offense as defined by Minnesota Statutes ~~§ 260.015, subd. 21~~, section 260B.007, subdivision 16 or a juvenile traffic offense as defined by Minnesota Statutes ~~§ 260.193~~, section 260B.225.

Subd. 2. Arraignment. When a charging document is filed, the court administrator shall promptly schedule an arraignment on the charging document and send notices pursuant to ~~Minnesota Rules of Juvenile Procedure 25~~.

Comment--Rule 6

Previously, this rule only related to petitions in juvenile court. Due in large part to the high volume of gross misdemeanor alcohol related driving offenses, ~~Minn.Stat. §§ 169.121 (Supp. 1995) and 169.129 (1994) were~~ the law was amended to permit tab charges for these offenses to get cases to court more promptly. ~~If a demand for formal complaint is made by an adult charged with a gross misdemeanor alcohol offense the prosecutor must file the complaint in 48 hours if the defendant is in custody and within ten (10) days if not in custody.~~

~~In its overhaul of juvenile statutes, the legislature also expanded the list of offenses which may be charged by tab charge rather than petition in juvenile court. See Minn.Stat. § 260.015, subd. 21 (Supp. 1995); 1996 Minn. Laws Ch. 408, Art. 6, Sec. 1. A tab charge is a brief statement entered upon the records by the clerk of the offense charged and citation to the statute, rule, regulation, ordinance or other provision of the law a child is alleged to have violated. The tab charge serves as a substitute for a petition. Tab charges may be used for any misdemeanor and for gross misdemeanors under Minn.Stat. §§ 169.121 (Supp. 1995) and 169.129 (1994). Adults have the right to demand a formal complaint in place of a tab charge. These rules have afforded juveniles the right to demand a petition where the child is charged with a misdemeanor(s) or gross misdemeanor(s).~~

A citation is defined as a writ issued out of a court of competent jurisdiction or an order issued by police commanding the person named to appear on a designated day and respond to a particular violation. It is most commonly used for minor offenses such as traffic violations. Some "tickets" issued by police are called "citation," some are called "complaint," and some are called "tab charge." The terms have become interchanged in everyday use.

In its revision of juvenile statutes, the legislature also expanded the list of offenses that may be charged by tab charge rather than petition in juvenile court. See Minn. Stat. § 260B.007, subd. 16 (Supp. 2001). A tab charge is a brief statement entered upon the records by the clerk of the offense charged and citation to the statute, rule, regulation, ordinance or other provision of the law a child is alleged to have violated. The tab charge serves as a substitute for a petition. Tab charges may be used for any misdemeanor and for gross misdemeanors under Minn. Stat., ch. 169A. Adults have the right to demand a formal complaint in place of a tab charge. If a demand for a formal complaint is made by an adult charged with a gross misdemeanor alcohol offense, the prosecutor must file the

complaint within 48 hours if the defendant is in custody, and within 10 days if not in custody. These rules have afforded juveniles the right to demand a petition where the child is charged with a misdemeanor(s) or gross misdemeanor(s).

Minn._R._Juv._P. 6.06, subd. 2 provides that the court administrator shall promptly schedule the matter for hearing when a charging document is filed with the court. Certain offenses may be resolved without a court appearance by mailing or delivering to the court administrator a payable fine which has been predetermined by the court. Each judicial district may establish a list of minor offenses which may be settled by paying a fine. It is recommended that the list be made part of or considered by the district in establishing its dispositional criteria.

Minn._R._Juv._P. 6.03, subd. 2 provides that a petition shall be signed by the prosecuting attorney before it is filed with the court. Minn._Stat. § ~~260.131 subd. 1 (1994)~~260B.141, subd. 1 (2000) provides that any reputable person having knowledge of a child who is a resident of this state, who appears to be delinquent, may petition the juvenile court. Minn._R._Juv._P. 6.03, subd. 3 sets forth the necessary contents of the petition.

RULE 7. ARRAIGNMENT

RULE 7.01 APPLICATION

This rule is not applicable to proceedings on juvenile petty offenses or juvenile traffic offenses, which are governed by ~~Minnesota Rules of Juvenile Procedure~~ 17.

RULE 7.02 GENERALLY

Arraignment is a hearing at which the child shall enter a plea in the manner provided in ~~Minnesota Rules of Juvenile Procedure~~ 8.

RULE 7.03 TIMING [no proposed amendments to subdivision 1]

Upon the filing of a charging document, the court administrator shall promptly fix a time for arraignment and send notices pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 25.

Subd. 2. Child Not in Custody. The child not in custody shall be arraigned ~~within twenty (20) days after the child has been served with~~no later than thirty (30) days after the filing of the charging document. The child has the right to have a copy of the charging document for three (3) days before being arraigned.

RULE 7.04 HEARING PROCEDURE [no proposed amendments to subdivisions 2, 3, and 4]

Subd. 1. Initial Procedure. At the commencement of the hearing, the court shall on the record:

(A) verify the name, age, race, and residence of the child who is charged;

(B) determine whether all necessary persons are present and identify those present for the record;

(C) determine whether notice requirements have been met and if not, whether the affected persons waive notice;

(D) determine whether the child is either represented by counsel or waives counsel in the manner provided by ~~Minnesota Rules of Juvenile Procedure~~ 3;

(E) if the child appears without counsel, and the court determines the child has properly waived the child's right to counsel, the court shall advise the child of all trial rights and other rights provided by these rules;

(F) explain to the child and the child's parent(s), legal guardian or legal custodian, if present, the child's right to remain silent in this and subsequent appearances before the court; and

(G) if two or more children are charged jointly with the same offense, advise the child of the danger of dual representation pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 3.03.

Comment--Rule 7

Minn._R._Juv._P. 7.04, subd. 1-(G) and Minn._R._Juv._P. 3.03 regarding advising children of the perils of dual representation are patterned after Minn._R._Crim._P. 17.03, subd. 5.

RULE 8. PLEAS

RULE 8.01 APPLICATION

Subd. 1. Juvenile Petty and Traffic Proceedings. ~~This rule is not applicable to proceedings on~~ Pleas in juvenile petty or juvenile traffic offenses, which proceedings are governed by Minnesota Rules of Juvenile Procedure 17.06.

Subd. 2. Extended Jurisdiction Juvenile Proceedings. Pleas in extended jurisdiction juvenile proceedings ~~shall be pursuant to~~ are governed by Rule 19.10, subdivision 1 and Minnesota Rules of Criminal Procedure 15.

Subd. 3. Competency Proceedings. Any child subject to competency proceedings pursuant to Rule 20 shall not be permitted to enter a plea until the court determines that the child is competent.

RULE 8.02 GENERALLY

If the child pleads not guilty to charges alleged in the charging document, the court shall conduct proceedings in accordance with ~~Minnesota Rules of Juvenile Procedure 9~~ through 16. If the child remains silent when confronted with charges, or if the court refuses to accept a guilty plea by the child, the court shall proceed in the same manner as if the child pled not guilty.

RULE 8.03 PLEA OF NOT GUILTY WITHOUT APPEARANCE

Except when the child is in detention, the court may permit a written plea of not guilty or a plea of not guilty on the record ~~may~~to be entered by child's counsel without the personal appearance of the child, child's parent(s), legal guardian or legal custodian or their counsel. The child's counsel shall immediately furnish a copy of the written plea of not guilty to the prosecuting attorney, either personally or by mail.

RULE 8.04 PLEA OF GUILTY [no proposed amendments to subdivisions 3 and 4]

Subd. 1. Waiver of Right to Trial. The court shall not accept a child's plea of guilty until first determining, the following, under the totality of the circumstances, and based on the child's statements, whether on the record or contained in a written document signed by the child and the child's counsel:

(A) *Charges in Charging Document; Factual Basis for Plea.* That the child understands the charges stated in the charging document, and the essential elements of each charge, and that there is a factual basis for the guilty plea;

(B) *Right to Trial.* That the child understands the child's right to have a trial, that is, to require proof of all elements of each offense stated in the charging document, and that this includes an understanding of the following related rights:

(1) the right to be presumed innocent of each charge until and unless the petitioner succeeds in proving beyond a reasonable doubt that the child is guilty;

(2) the right to remain silent during trial proceedings if the child wishes and the right of the child to testify on the child's own behalf if the child wants to;

(3) the right to call witnesses to testify on the child's behalf, including the right to use court subpoenas to require that witnesses for the child attend the trial; and

(4) the right to hear the testimony of all witnesses called by the prosecuting attorney, and to cross-examine these witnesses; and

(C) *Dispositions.* That the child understands the powers of the court to make a disposition if the court finds that the allegations in the charging document are proved, including the child's understanding that:

(1) the court's powers range up to the most severe step of placing custody of the child in an institution;

(2) the court's disposition could be for a duration ranging upward to the time the child attains age 19; and

(3) the court can modify an initial disposition, even repeatedly, for a term ranging up to the time the child attains age 19; and

(4) the child understands the potential future consequences if the court finds that the allegations in the charging document are proved, including the child's understanding of:

(a) the effect of the finding on sentencing of the child if the child, when an adult, is convicted of an adult offense; and

(b) the effect of the finding in the event the child commits any further offenses while a juvenile, including the prospects for certification of the child for an adult court prosecution or for prosecution in juvenile court as an extended jurisdiction juvenile;

(D) *Right to Counsel.* If a child charged with a misdemeanor remains without counsel or with only stand-by counsel, that the child understands the continued right to be represented by counsel, and understands that counsel:

(1) could give the child further information and advice on his rights and on the choice to ~~admit guilt or to deny~~ plead guilty or not guilty to the charges in the petition; and

(2) could assist the child during a trial, to protect all rights of the child that arise in the course of a trial; and

(E) *Free Choice*. That any plea of guilty is made freely, and that no one has made either threats or promises to the child to encourage a plea of guilty other than those that the parties have disclosed to the court; and

(F) *No Claim of Innocence*. That the child is not making any claim of innocence.

Subd. 2. Withdrawal of Plea. The child may, on the record or by written motion filed with the court, request to withdraw a plea of guilty. The court may allow the child to withdraw a guilty plea:

(A) before disposition, if it is fair and just to do so, giving due consideration to the reasons the child gives and any prejudice that withdrawal of the plea would cause because of actions taken in reliance on the child's plea; or

(B) at any time, upon showing that withdrawal is necessary to correct a manifest injustice.

Subd. 5. Future Proceedings. If the court accepts a plea of guilty and makes a finding that the allegations in the charging document are proved, the court shall schedule further proceedings pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 14 and 15.

Comment – Rule 8

It is also desirable that the child be asked to acknowledge by signing the plea petition that the child has read the questions set forth in the petition or that they have been read to the child; that the child understands them; that the child gave the answers set forth in the petition; and that they are true. Suggested forms of the plea petition are appended to the rules.

RULE 9. SETTLEMENT DISCUSSIONS AND PLEA AGREEMENTS

[no proposed amendments]

RULE 10. DISCOVERY

RULE 10.01 SCOPE AND APPLICATION

~~Minnesota Rules of Juvenile Procedure~~ 10 applies to discovery for delinquency proceedings, certification hearings and extended jurisdiction juvenile proceedings and prosecutions. Pursuant to ~~Minnesota Rules of Juvenile Procedure 17.10~~ 17.07, this rule may apply, in the discretion of the court, to juvenile petty and juvenile traffic proceedings. The discovery procedures provided for by this rule do not exclude other lawful methods available for obtaining evidence. ~~Pursuant to~~

~~Minnesota Rules of Juvenile Procedure 1.01, references in this rule to "child's counsel" include the child who is proceeding pro se.~~

RULE 10.02 EVIDENCE AND IDENTIFICATION DISCLOSURE

The prosecuting attorney shall advise the child's counsel in writing of:

(A) any evidence against the child obtained as a result of a search, seizure, wiretapping or any form of electronic or mechanical eavesdropping;

(B) any confessions, admissions, or statements in the nature of confessions made by the child;

(C) any evidence against the child discovered as a result of confessions, admissions or statements in the nature of confessions made by the child; and

(D) any identification procedures involving the child, including but not limited to line-ups or other observations of the child and the exhibition of photographs of the child.

The notice required by this rule shall be provided by the prosecutor within five (5) days of a not guilty plea by the child. If child's counsel ~~for the child~~ makes a demand for disclosure pursuant to this rule, the disclosures shall be provided within five (5) days of the demand. Evidence which becomes known to the prosecutor after the deadlines for disclosure provided here, shall immediately be disclosed to child's counsel ~~for the child~~.

RULE 10.03 NOTICE OF ADDITIONAL OFFENSES

The prosecuting attorney shall advise child's counsel of evidence of any additional offenses that may be offered at the trial under any exclusionary rule exceptions. Such additional acts shall be described with sufficient particularity to enable the child to prepare for the trial. The notice need not include offenses for which the child has been previously prosecuted, or that may be offered in rebuttal of character witnesses for the child or as a part of the occurrence or episode out of which the charges against the child arose. Notice of additional offenses shall be given at or before the pretrial or ~~Omnibus~~omnibus hearing or as soon after those hearings as the offenses become known to the prosecutor. If there is no pretrial or ~~Omnibus~~omnibus hearing, the notice shall be given at least seven (7) days before the trial.

RULE 10.04 DISCLOSURE BY PROSECUTING ATTORNEY [no proposed amendments to subdivision 2]

Subd. 1. Disclosure by Prosecuting Attorney Without Order of Court. After a charging document is filed, if the child's counsel makes a request, the prosecuting attorney shall make the following disclosures within five (5) days of the receipt of the request:

(A) *Trial Witnesses.* The prosecuting attorney shall disclose to the child's counsel the names and addresses of the persons the prosecuting attorney intends to call as witnesses at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing, together with their prior record of adult convictions, any prior record of allegations of delinquency which have been proved and any prior delinquency adjudications within the actual knowledge of the prosecuting attorney. The prosecuting attorney shall permit the child's counsel to inspect and copy the witnesses' relevant written or recorded statements and any written summaries of the substance of relevant oral statements made by the witnesses to the prosecuting attorney or agents of the prosecuting attorney within the knowledge of the prosecuting attorney.

(B) *Statements of Child and Accomplices.* The prosecuting attorney shall disclose and permit the child's counsel to inspect and copy any relevant written or recorded statements made by the child and accomplices within the possession or control of the prosecuting attorney, the existence of which is known by the prosecuting attorney, and shall provide the child's counsel with the substance of any oral statements made by the child and accomplices which the prosecuting attorney intends to offer in evidence at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing.

(C) *Documents and Tangible Objects.* The prosecuting attorney shall disclose and permit the child's counsel to inspect and copy books, papers, documents, photographs and tangible objects that the prosecutor intends to introduce in evidence at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing, or which were obtained from or belong to the child and which the prosecuting attorney intends to offer as evidence at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing. If the prosecuting attorney intends to offer evidence of buildings or places at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing, the prosecuting attorney shall permit the child's counsel to inspect and photograph such buildings or places.

(D) *Reports of Examinations and Tests.* The prosecuting attorney shall disclose and permit the child's counsel to inspect and copy any results or reports of physical or mental examinations, scientific tests, experiments or comparisons made which are relevant to the case.

(E) *Record of the Child.* The prosecuting attorney shall inform the child's counsel of any prior allegations of delinquency which have been proved and of prior adjudications of delinquency of the child within the possession or control of the prosecuting attorney.

(F) *Special Education and School Disciplinary Records.* The prosecuting attorney shall disclose and permit the child's counsel to inspect and copy all special education and school disciplinary records of the child, which were transmitted by the agency reporting the crime for consideration in charging.

(G) *Exculpatory Information.* The prosecuting attorney shall disclose to the child's counsel any material or information within the possession and control of the prosecuting attorney that tends to disprove the allegation(s).

(GH) *Scope of the Prosecuting Attorney's Obligations.* The prosecuting attorney's obligations under this rule extend to material and information in the possession or control of members of the prosecuting attorney's staff and of any others who have participated in the investigation or evaluation of the matter and who report to the prosecuting attorney's office.

Subd. 3. Information Not Subject to Disclosure by Prosecuting Attorney.

(A) *Opinions, Theories or Conclusions.* Unless otherwise provided by these rules, any legal research, records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of the prosecuting attorney or members of the prosecuting attorney's staff or officials or agents of the prosecuting attorney participating in the matter are not subject to disclosure.

(B) *Reports.* Except as provided in ~~Minnesota Rules of Juvenile Procedure~~ 10.04, ~~subd. subdivisions~~ 1, (C)-(FG), reports, memoranda or internal documents made by the prosecuting attorney or members of the prosecuting attorney's staff or by agents of the prosecuting attorney in connection with the matter are not subject to disclosure.

(C) *Prosecution Witnesses Under Prosecuting Attorney's Certificate.* The information relative to the witnesses and persons described in ~~Minnesota Rules of Juvenile Procedure~~ 10.04, ~~subd. subdivisions~~ 1(A) and (B), shall not be subject to disclosure if approved by the court when the prosecuting attorney files a written certificate with the court that to do so may subject the witnesses

or persons or others to physical harm or coercion, provided, however, that non-disclosure under this rule shall not extend beyond the time the witnesses are sworn to testify.

RULE 10.05 DISCLOSURE BY CHILD

Subd. 1. Information Subject to Disclosure Without Order of Court. After a charging document is filed, if the prosecuting attorney makes a request, the child's counsel shall make the following disclosures within five (5) days of the receipt of the request.

(A) *Documents and Tangible Objects.* The child's counsel shall disclose and permit the prosecuting attorney to inspect and copy books, papers, documents, photographs and tangible objects which the child intends to introduce in evidence at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing. If the child's counsel intends to offer evidence of buildings or places at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing, the child's counsel shall permit the prosecuting attorney to inspect and photograph such buildings or places.

(B) *Reports of Examinations and Tests.* The child's counsel shall disclose and permit the prosecuting attorney to inspect and copy any results or reports of physical or mental examinations, scientific tests, experiments and comparisons made in connection with the particular matter within the possession or control of the child which the child intends to introduce in evidence at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing or which were prepared by a witness whom the child intends to call at the trial, extended jurisdiction juvenile proceeding or prosecution or reference certification hearing when the results or reports relate to the testimony of the witness.

(C) *Notice of Defense, Witnesses for the Child and Record.*

(1) Notice of Defenses. The child's counsel shall inform the prosecuting attorney in writing of any defense, other than that of a denial, on which the child intends to rely at the trial, including but not limited to the defenses of self-defense, entrapment, duress, alibi, double jeopardy, statute of limitations, collateral estoppel, a defense pursuant to Minnesota Statutes—§, section 609.035 or intoxication. Notice of a defense of mental illness or mental deficiency is governed by ~~Minnesota Rules of Juvenile Procedure 20.02, subd.~~subdivision 1.

(2) Witnesses for the Child. The child's counsel shall provide the prosecuting attorney with the names and addresses of persons whom the child intends to call as witnesses at the

trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing together with their prior record of adult convictions, any prior record of proven allegations of delinquency and any prior delinquency adjudications within the actual knowledge of the child's counsel.

(3) Statements of Witnesses for the Child. The child's counsel shall permit the prosecuting attorney to inspect and copy any relevant written or recorded statements of the persons whom the child intends to call as witnesses at the trial, extended jurisdiction juvenile proceeding or prosecution or reference certification hearing and which are within the possession or control of the child's counsel and shall permit the prosecuting attorney to inspect and copy any written summaries within the knowledge of the child or the child's counsel of the substance of any oral statements made by such witnesses to the child's counsel or obtained by the child at the direction of counsel.

(4) Alibi. If the child intends to offer evidence of an alibi, the child's counsel shall also inform the prosecuting attorney of the specific place or places where the child contends the child was when the alleged delinquent act occurred and shall inform the prosecuting attorney of the names and addresses of the witnesses the child intends to call at the trial in support of the alibi.

(5) Record. The child's counsel shall inform the prosecuting attorney of any prior allegations of a delinquency which have been proved and any prior adjudications of delinquency of the child. A child shall not be required to reveal prior offenses which might result in enhancement of pending enhanceable offenses.

Subd. 2. Disclosure Upon Order of Court.

(A) *Disclosure Procedures With Child.* Upon motion of the prosecuting attorney and a showing that one or more of the following procedures will be material in determining whether the child committed the alleged act or should be certified or is an extended jurisdiction juvenile, the court at any time before a hearing may, subject to constitutional limitations, order the child to:

- (1) appear in a line-up;
- (2) speak for identification by witnesses to an offense or for the purpose of taking voice prints;
- (3) be fingerprinted or permit palm prints or footprints to be taken;
- (4) permit measurements of the child's body to be taken;
- (5) pose for photographs not involving re-enactment of a scene;
- (6) permit the taking of samples of blood, hair, saliva, urine and other materials of the child's body which involve no unreasonable intrusion;

(7) provide specimens of handwriting; or

(8) submit to reasonable physical or medical inspection of the child's body.

(B) *Notice of Time and Place of Discovery Procedures With Child.* Whenever the personal appearance of the child is required for procedures ordered pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 10.05, ~~subd. subdivision~~ 2(A), the prosecuting attorney shall inform the child's counsel of the time and place of the procedure.

(C) *Medical Supervision.* Blood tests shall be conducted under medical supervision and the court may require medical supervision for any other test ordered pursuant to this rule when the court deems such supervision necessary. Upon motion of the child's counsel, the court may order the child's appearance delayed for a reasonable time or may order that tests take place at the child's residence or some other convenient place.

(D) *Notice of Results.* The prosecuting attorney shall make available to the child's counsel the results of the procedures provided by ~~Minnesota Rules of Juvenile Procedure~~ 10.05, ~~subd. subdivision~~ 2(A) within five (5) days from the date the results become known to the prosecuting attorney, unless otherwise ordered by the court.

Subd. 3. Information Not Subject to Disclosure by Child.

(A) *Opinions, Theories or Conclusions.* Unless otherwise provided by these rules, any legal research, records, correspondence, reports or memoranda to the extent that they contain the opinions, theories, or conclusions of the child, the child's counsel, members of counsel's staff or counsel's agents participating in the representation of the child are not subject to disclosure.

(B) *Reports.* Except as provided by ~~Minnesota Rules of Juvenile Procedure~~ 10.05, ~~subd. subdivisions~~ 1(A) and (B) and (C)(2), (3), and (5), reports, memoranda or internal documents made by the child's counsel or members of counsel's staff, or counsel's agents in connection with the defense of the matter against the child are not subject to disclosure.

RULE 10.06 REGULATION OF DISCOVERY [no proposed amendments to subdivisions 1, 3, 4, 5, 6, 7, and 8]

Subd. 2. Continuing Duty to Disclose. If, after compliance with any discovery rule or order, the prosecuting attorney or the child's counsel discovers additional material, information or witnesses subject to disclosure, ~~the prosecuting attorney or the child's counsel~~ shall promptly notify the opposing side of the existence of the additional material or information and the identity of the

witnesses. The prosecuting attorney and the child's counsel have a continuing duty at all times before and during trial to supply the materials and information required by these rules.

RULE 10.07 TAKING DEPOSITIONS [no proposed amendments to subdivisions 1, 3, 4, and 5]

Subd. 2. Procedure. The court may order that the deposition be taken orally before any designated person authorized to administer oaths and that any designated book, paper, document, record, recording or other material not privileged, be produced at the same time and place. The order shall direct the child to be present when the deposition is being taken.

(A) *Oral Deposition.* Depositions shall be taken upon oral examination.

(B) *Oath and Record.* The witness shall be put ~~on~~under oath and a verbatim record of the testimony shall be made in the manner directed by the court. In the event the court orders that the testimony at a deposition be recorded by other than stenographic means, the order shall designate the manner of recording, preserving and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If this order is made, the prosecuting attorney or the child's counsel may nevertheless arrange to have a stenographic transcription made at their own expense.

(C) *Scope and Manner of Examination--Objections, Motion to Terminate.*

(1) Consent Required. In no event shall the deposition of a child who is charged with an offense be taken without the child's consent.

(2) Scope and Manner of Taking. The scope and manner of examination and cross-examination in the taking of a deposition to be used at trial shall be the same as that allowed at the trial. The scope and manner of examination and cross-examination in the taking of a deposition to be used at a certification or extended jurisdiction juvenile hearing shall be the same as would be allowed at a certification or extended jurisdiction juvenile hearing.

(3) Objections. All objections made at the time of the examination to the qualifications of the person taking the deposition, or to the manner of taking it, or to the evidence presented or to the conduct of any person present at the depositions and any other objection to the proceedings shall be recorded by the person before whom the deposition is taken. Evidence objected to shall be taken subject to the objections unless the objection is based on the witness's use of the Fifth Amendment.

(4) Limitation upon Motion. At any time, on motion of the child's counsel or the prosecuting attorney, or of the deponent, the court may limit the taking of the deposition to that which is commensurate in cost and duration with the needs of the case, the resources available and the issues.

At any time during the taking of the deposition, on motion of the child's counsel or the prosecuting attorney, or of the deponent, and upon a showing that the examination is being conducted in bad faith or in such manner as to annoy, embarrass or oppress the deponent, the child, the child's counsel or prosecuting attorney or to elicit privileged testimony, the court which ordered the deposition taken may order the person conducting the examination to cease forthwith from taking the deposition or may limit the scope and manner of taking the deposition by ordering as follows:

(A) that certain matters not be inquired into or that the scope of examination be limited to certain matters, or

(B) that the examination be conducted with no one present except persons designated by the court.

Upon demand of the child's counsel, the prosecuting attorney or the deponent, the taking of the deposition shall be suspended for the time necessary to move for the order.

Comment -- Rule 10

Minn._R._Juv._P. 10.02 is modeled after the Minn._R._Crim._P. 7.01. A suggested form for the notice to be provided by this rule is included in the appendix of forms, following these rules.

Minn._R._Juv._P. 10.03 is modeled after Minn._R._Crim._P. 7.02 and would encompass the commonly referred to Spreigl notice derived from State v. Spreigl, 139 N.W.2d 167 (1965).

Minn._R._Juv._P. 10.05, subd. 1(C)(5) provides that a child is not required to reveal prior offenses which might result in enhancement of pending enhanceable offenses. An example of an "enhanceable offense" is a pending misdemeanor fifth degree assault which could be amended to a gross misdemeanor under Minn._Stat. § 609.224, subd. 2 (Supp. ~~1995~~2001) if the prosecutor knew, for instance, of the child's prior adjudication for misdemeanor assault against the same victim in another county.

RULE 11. PRETRIAL CONFERENCE

RULE 11.01 TIMING [no proposed changes]

RULE 11.02 EVIDENTIARY AND OTHER ISSUES

At the pretrial conference, the court shall determine whether there are any constitutional or evidentiary issues and, if so, schedule an omnibus hearing pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 12. If there is no pretrial conference, constitutional or evidentiary issues shall be raised by written motion of the child's counsel or prosecuting attorney, and the court shall schedule an omnibus hearing. The written motion must specifically set forth the issues raised.

Comment--Rule 11

References in this rule to "child's counsel" include the child who is proceeding pro se. Minn. R. Juv. P. 1.01.

RULE 12. OMNIBUS HEARING

RULE 12.01 SCHEDULING OF OMNIBUS HEARING

The court shall hold an omnibus hearing pursuant to Minnesota Rules of Criminal Procedure, Rule 11 any time before trial to determine issues raised pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 10 or 11 upon its own motion or upon motion of the child's counsel or the prosecuting attorney.

Where new information, evidence or issues arise during trial, the court may consider these issues at trial. Any issue not determined prior to trial shall be determined as part of the trial.

RULE 12.02 SCHEDULING OF TRIAL

If a demand for speedy trial ~~was~~is made, the omnibus hearing ~~will~~shall not extend the time for trial unless the court finds good cause for continuance of the trial date.

Comment--Rule 12

When the same judge is assigned to determine the admissibility of evidence in a suppression hearing and the guilt of the juvenile in the same proceeding, the juvenile's basic right to a fair trial by an impartial tribunal with a determination of guilt based on admissible evidence may be

compromised. E.g., In re J.P.L., 359 N.W.2d 622 (Minn. Ct. App. 1984). Continuances of trial beyond a ~~speedy trial demand~~ the time established by Minn. R. Juv. P. 13.02 are not recommended. However, the child's right to a fair trial will justify a short continuance where the child seeks reassignment of the judge pursuant to Minn. R. Juv. P. 22.

RULE 13. TRIALS

RULE 13.01 PURPOSE AND APPLICATION

A trial is a hearing held to determine whether the child is guilty or not guilty of the offenses alleged in the charging document. This rule applies to all delinquency, and juvenile petty and juvenile traffic trials. Extended jurisdiction juvenile trials are governed by ~~Minnesota Rules of Juvenile Procedure 19~~. Pursuant to ~~Minnesota Rules of Juvenile Procedure 1.01~~, references in this rule to "child's counsel" include the child who is proceeding pro se.

RULE 13.02 COMMENCEMENT OF TRIAL [no proposed amendments to subdivisions 1, 2, 4 and 5]

Subd. 3. Release. If the child is detained and the trial has not commenced within thirty (30) days of the demand ~~or~~ and a continuance has not been granted, the child shall be released subject to such nonmonetary release conditions as may be required by the court and the trial shall commence within sixty (60) days of the original demand for a speedy trial.

RULE 13.03 TRIAL [no proposed amendments]

RULE 13.04 EVIDENCE [no proposed amendments]

RULE 13.05 USE OF DEPOSITIONS AT TRIAL [no proposed amendments to subdivisions 2 and 3]

Subd. 1. Unavailability of Witness.

At a trial or hearing, a part ~~of~~ for all of a deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence if:

(A) the witness is dead or unable to be present or to testify at the trial or hearing because of the witness's existing physical or mental illness, infirmity; or

(B) the person offering the deposition has been unable to procure the attendance of the witness by subpoena, order of the court, or other reasonable means; or

(C) there is a stipulation by counsel; or

(D) for any other reason accepted by the court.

A deposition may not be used if it appears that the absence of the witness was procured or caused by the person offering the deposition, unless part of the deposition has previously been offered by another party.

RULE 13.06 STANDARD OF PROOF [no proposed amendments]

RULE 13.07 JOINT TRIALS [no proposed amendments to subdivisions 1, 3, and 4]

Subd. 2. Severance Because of Improper Joinder. Where a child was improperly joined in a proceeding, the court shall order severance upon motion of the prosecuting attorney or the child's counsel. Improper joinder is not a ground for dismissal.

RULE 13.08 JOINDER AND SEVERANCE OF OFFENSES [no proposed amendments to subdivision 1]

Subd. 2. Severance of Offenses. On motion of the prosecuting attorney or the child's counsel, the court shall sever offenses or charges if:

(a) the offenses or charges are not related;

(b) before trial, the court determines severance is appropriate to promote a fair determination of the child's guilt or innocence of each offense or charge; or

(c) during trial, with the child's consent or upon a finding of manifest necessity, the court determines severance is necessary to achieve a fair determination of the child's guilt or innocence of each ~~crime~~ offense or charge. Misjoinder of offenses is not a ground for dismissal.

RULE 13.09 FINDINGS [no proposed amendments]

RULE 13.10 FURTHER PROCEEDINGS

If the court makes a finding that the allegations of the charging document have been proved, the court shall hold dispositional proceedings pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 15.

Comment--Rule 13

~~Minn.R.Juv.P. 13.02, subd. 2 provides that a trial shall be commenced within sixty (60) days from the date of a demand for a speedy trial unless good cause is shown why the trial should not be held within that time. The trial may be postponed for good cause beyond the time limit upon request of the prosecuting attorney or the child or upon the court's initiative. Good cause for the delay does not include court calendar congestion unless exceptional circumstances exist. See McIntosh v. Davis, 441 N.W.2d 115 (Minn. 1989). A delay caused by witness unavailability is permitted when the delay is "neither lengthy nor unfairly prejudicial." In re G.D., 473 N.W.2d 878 (Minn. Ct. App. 1991), State v. Terry, 295 N.W.2d 95 (Minn. 1980).~~

For children held in detention, Minn. R. Juv. P. 13.02, subd. 1 requires that a trial be commenced within thirty (30) days from the date of the speedy trial demand unless good cause is shown why the trial should not be held within that time. If the trial has not commenced within the thirty (30) days ~~or~~and a continuance has not been granted upon a showing of good cause for a child held in detention, the child shall be released subject to nonmonetary release conditions that the court may require. The trial must then commence within 60 days of the date of the demand for a speedy trial and not 60 days from the child's release.

For children not held in detention, Minn.R.Juv.P. 13.02, subd. 2 provides that a trial shall be commenced within sixty (60) days from the date of a demand for a speedy trial unless good cause is shown why the trial should not be held within that time. The trial may be postponed for good cause beyond the time limit upon request of the prosecuting attorney or child's counsel or upon the court's initiative. Good cause for the delay does not include court calendar congestion unless exceptional circumstances exist. See McIntosh v. Davis, 441 N.W.2d 115 (Minn. 1989). A delay caused by witness unavailability is permitted when the delay is "neither lengthy nor unfairly prejudicial." In re Welfare of G.D., 473 N.W.2d 878 (Minn. Ct. App. 1991); State v. Terry, 295 N.W.2d 95 (Minn. 1980).

If the trial is not commenced within sixty (60) days from the date of the demand ~~off~~ for a speedy trial and a continuance has not been granted for good cause, the petition shall be dismissed. It is within the trial court's discretion whether it is dismissed with prejudice. See Barker v. Wingo, 407 U.S. 614 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972)-; State v. Kasper, 411 N.W.2d 182 (Minn. 1987); ~~and~~ State v. Friberg~~Friberg~~, 435 N.W.2d 509 (Minn. 1989).

Minn._R._Juv._P. 13.07 is modeled after Minn._R._Crim._P. 17.03, subds. 2 and 3. Minn._R._Juv._P. 13.08 is modeled after Minn._R._Crim._P. 17.03, subds. 1, 3 and 4. Joint trials should be discouraged where one or more of the children is without counsel.

RULE 14. CONTINUANCE FOR DISMISSAL

RULE 14.01 AGREEMENTS PERMITTED [no proposed amendment to subdivision 2]

Subd. 1. Generally. After consideration of the victim's views and subject to the court's approval, the prosecuting attorney and the child's counsel may agree that the juvenile proceeding will be suspended for a specified period without a finding that the allegations of the charging document have been proved after which it will be dismissed as provided in ~~Minnesota Rules of Juvenile Procedure~~ 14.07 on condition that the child not commit a delinquency or juvenile petty or juvenile traffic offense during the period of the continuance. The agreement shall be on the record or in writing and signed by the prosecuting attorney, the child, and the child's counsel, if any. The agreement shall contain a waiver by the child of the right to a speedy trial under ~~Minnesota Rules of Juvenile Procedure~~ 13.02, subds. subdivisions 1 and 2. The agreement may include stipulations concerning the existence of specified facts or the admissibility into evidence of specified testimony, evidence, or depositions if the suspension of prosecution is terminated and there is a trial on the allegations.

Subd. 3. Limitations on Agreements. The agreement may not specify a period of suspension longer than the juvenile court has jurisdiction over the child nor any condition other than that which could be imposed upon probation after a finding that the offenses alleged have been proved.

RULE 14.02 COURT APPROVAL; FILING OF AGREEMENT; RELEASE

All agreements made under ~~Minnesota Rules of Juvenile Procedure~~ 14.01 of this rule must be approved by the court on the record or in writing. Promptly after any written agreement is made

and approved by the court, the prosecuting attorney shall file the agreement together with a statement that pursuant to the agreement the juvenile proceeding is suspended for a period specified in the statement. Upon court approval of the agreement, the child shall be released from any custody under ~~Minnesota Rules of Juvenile Procedure~~ 5.

RULE 14.03 MODIFICATION OF AGREEMENT

Subject to ~~Minnesota Rules of Juvenile Procedure~~ 14.01 and 14.02 and with the court's approval on the record or in writing, the parties, by mutual consent, may modify the terms of the agreement at any time before its termination.

RULE 14.04 TERMINATION OF AGREEMENT; RESUMPTION OF PROCEEDINGS [no proposed amendment to subdivision 2]

Subd. 1. Upon Notice of Child or Child's Counsel. The agreement is terminated and the juvenile proceeding may resume as if there had been no agreement if the child's counsel serves upon the prosecuting attorney and files a notice with the court that the agreement is terminated.

RULE 14.05 EMERGENCY ORDER [no proposed amendments]

RULE 14.06 RELEASE STATUS UPON RESUMPTION OF DELINQUENCY, JUVENILE PETTY OR JUVENILE TRAFFIC PROCEEDINGS

If the juvenile proceeding resumes under ~~Minnesota Rules of Juvenile Procedure~~ 14.04, the child shall return to the release status in effect before the juvenile proceeding was suspended unless the court imposes additional or different conditions of release under ~~Minnesota Rules of Juvenile Procedure~~ 5.

RULE 14.07 TERMINATION OF AGREEMENT; DISMISSAL [no proposed amendments]

RULE 14.08 TERMINATION AND DISMISSAL UPON SHOWING OF REHABILITATION [no proposed amendments]

RULE 14.09 MODIFICATION OR TERMINATION AND DISMISSAL UPON CHILD'S MOTION

If, upon motion of the ~~child or~~ child's counsel and hearing, the court finds that the prosecuting attorney obtained the child's consent to the agreement as a result of a material misrepresentation by a person covered by the prosecuting attorney's obligation under ~~Minnesota Rules of Juvenile Procedure~~ 10.04, the court may:

- (A) order appropriate modification of the terms resulting from the misrepresentation; or
- (B) if the court determines that the interests of justice require, order the agreement terminated, dismiss the juvenile proceeding, and bar further juvenile proceedings on the offense involved.

RULE 14.10 COURT AUTHORITY TO DISMISS

Nothing in this rule shall limit the inherent power of the court to continue a case for dismissal even in the absence of an agreement by the prosecutor and child's counsel. In the event the court exercises this power:

- (A) The action of the court must be on the record or in writing~~;~~;
- (B) Unless waived by the child, the court must guarantee the child's right to a speedy trial under ~~Minnesota Rules of Juvenile Procedure~~ 13.02, subs. subdivisions 1 and 2~~;~~;
- (C) The continuance shall be on conditions provided in ~~Minnesota Rules of Juvenile Procedure~~ 14.01 subs. subdivisions 1 and 2, and shall be subject to limitations stated in ~~Minnesota Rules of Juvenile Procedure~~ 14.01, subd. subdivision 3~~;~~;
- (D) The terms of the continuance may be modified on the record or in writing, by the court, with notice to all parties~~;~~; and
- (E) Proceedings following the continuance shall be governed by ~~Minnesota Rules of Juvenile Procedure~~ 14.04 - 14.08.

Comment--Rule 14

Pursuant to Minn. R. Juv. P. 1.01, references to "child's counsel" include the child who is proceeding pro se.

The Minnesota Supreme Court's Juvenile Rules Advisory Committee discovered that many juvenile court practitioners did not appreciate the limited benefits of withholding adjudication (now

designated "continuance without adjudication") and were inadvertently misrepresenting its benefits to juveniles. See Comment to Minn._R._Juv._P. 15. Many practitioners were, in effect, treating withholding of adjudication as a continuance for dismissal or pretrial diversion, similar to Minn._R._Crim._P. 27.05. In order to avoid future misuse of the continuance without adjudication and allow juvenile court practitioners the benefits of continuance for dismissal, Minn._R._Crim._P. 27.05 was incorporated into the juvenile rules. Because there is no finding that the allegations of the charging document have been proved in a continuance for dismissal, the offense should not count towards a juvenile's future criminal history score under the sentencing guidelines.

All agreements under this rule, including written agreements, must be approved by the court in writing or on the record.

~~Continuance~~A continuance for dismissal ~~and/or~~ continuance without adjudication under Minn._R._Juv._P. 15.05, subd. 4 are not the only options available for dealing with an alleged juvenile offender without formal process. ~~By July 1, 1995, every~~Every county attorney ~~should~~is required to have a pretrial diversion program established for certain juveniles subject to juvenile court jurisdiction, as an alternative to formal adjudication. See Minn._Stat. § 388.24 (~~Supp. 1995~~2000). With statutory pretrial diversion readily available for less serious juvenile offenders, presumably the use of continuance without adjudication and continuance for dismissal under these rules will become less common.

Minn._R._Juv._P. 14 specifies the procedure to be followed when the child, child's counsel and prosecuting attorney agree to a continuance for dismissal. ~~The rule in no way limits the court's~~ Rule 14.10 further provides that the court has the inherent authority to order a continuance for dismissal of its own volition without the agreement of the parties. See ~~State v. Krotzer, 531 N.W.2d 862 (Minn. Ct. App. 1995) pet. for rev. granted (Minn. July 20, 1995).~~In re Welfare of J.B.A., 581 N.W.2d 37 (Minn. Ct. App. 1998).

RULE 15. DELINQUENCY DISPOSITION

RULE 15.01 GENERALLY

Subd. 1. Findings on Charges. All references in this rule to findings that allegations in the charging document have been proved include findings pursuant to a plea of guilty by the child under ~~Minnesota Rules of Juvenile Procedure~~ 8.04 and findings after trial pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 13.09.

Subd. 2. Application. This rule applies to delinquency dispositions. ~~Minnesota Rules of Juvenile Procedure~~ 17 governs dispositions for juvenile petty offenses and juvenile traffic offenses. ~~Minnesota Rules of Juvenile Procedure~~ 19 provides for sentence and disposition in extended jurisdiction juvenile cases.

RULE 15.02 TIMING [no proposed amendments to subdivision 1]

Subd. 2. Order. The court shall enter a dispositional order pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 15.05:

(A) within forty-five (45) days from the finding that the charges have been proved for a child not held in detention; or

(B) within fifteen (15) days from the finding that the charges have been proved for a child held in detention.

Subd. 3. Delay. For good cause, the court may extend the time period to enter a dispositional order for one additional period of thirty (30) days for a child not held in detention or fifteen (15) days for a child held in detention. Except in extraordinary circumstances, if the court fails to enter a dispositional order for a child held in detention within the time limits prescribed by this rule, the child shall be released from detention. If a dispositional order for a child is not entered within the time limits prescribed by this rule, the court may dismiss the case.

Subd. 4. Transfer of File. If the matter is to be transferred to the child's county of residence for disposition, the court shall direct the court administrator to transfer the file to the child's home county within five (5) days of the finding that the offense(s) charged have been proved. Venue transfers in juvenile court are governed by Minnesota Statutes ~~§ 260.124~~, section 260B.105. For convenience of the participants, the court which accepts a plea may determine the disposition for the court which will supervise the child's probation, if the transferring court has conferred with the receiving court and there is agreement regarding the disposition.

RULE 15.03 PREDISPOSITION REPORTS [no proposed amendments to subdivisions 1 and 3]

Subd. 2. Placement. With the consent of the child at any time or without consent of the child after the delinquency charges of a charging document pursuant to Minnesota Statutes, section ~~260.015, subd. 5(a)(1) or (2)~~260B.007, subdivisions 6(a)(1) or (2) have been proved, the court may

place the child with the consent of the Commissioner of Corrections in an institution maintained by the Commissioner of Corrections for the detention, diagnosis, custody and treatment of persons adjudicated to be delinquent in order that the investigation and evaluations may be conducted pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 15.03, ~~subd.~~subdivision 1.

Subd. 4. Filing and Inspection of Reports. The person making the report shall file the report ~~twenty-four (24) hours~~three (3) days prior to the time scheduled for the disposition hearing and the reports shall be available for inspection and copying by the child, ~~counsel for the child's~~counsel, the prosecuting attorney and counsel for the parent(s), legal guardian or legal custodian of the child.

RULE 15.04 HEARING

Subd. 1. Procedure. Disposition hearings shall be separate from the hearing at which the charges are proved and may be held immediately following that hearing. Disposition hearings shall be conducted in a manner designed to facilitate opportunity for all participants to be heard. The child and ~~counsel for the child's~~counsel, if any, shall appear at all disposition hearings. The child's parents and their counsel, if any, may also participate in the hearing. The child has the right of allocution at the disposition hearing, prior to any disposition being imposed.

Subd. 2. Evidence. The court may receive any information, except privileged communication, that is relevant to the disposition of the case including reliable hearsay and opinions. Anyone with the right to participate in the disposition hearing pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 2 may call witnesses, subject to cross-examination, regarding an appropriate disposition and may cross-examine any persons who have prepared a written report relating to the disposition.

RULE 15.05 DISPOSITIONAL ORDER

Subd. 1. Adjudication and Disposition. On each of the charges found by the court to be proved, the court shall either:

(A) adjudicate the child delinquent pursuant to ~~Minnesota Statutes § 260.185, subd. 1,~~section 260B.198, subdivision 1; or

(B) continue the case without adjudicating the child delinquent and order a disposition pursuant to ~~Minnesota Statutes § 260.185, subd.,~~section 260B.198, subdivisions 1(a) or (b).

The adjudication or continuance without adjudication shall occur at the same time and in the same court order as the disposition.

Subd. 2. Considerations; Findings.

(A) The dispositional order made by the court shall contain written findings of fact to support the disposition ordered and shall set forth in writing the following information:

(1) why public safety and the best interests of the child are served by the disposition ordered;

(2) what alternative dispositions were recommended to the court and why such recommendations were not ordered; and

(3) if the disposition changes the place of custody of the child;

(a) the reasons why public safety and the best interest of the child are not served by preserving the child's present custody; and

(b) suitability of the placement, taking into account the program of the placement facility and assessment of the child's actual needs.

(B) When making a disposition, the court shall consider whether a particular disposition will serve established principles of dispositions, including but not limited to:

(1) Necessity. It is arbitrary and unjust to impose a disposition that is not necessary to restore law abiding conduct. Considerations bearing on need are:

(a) Public Safety. The risk to public safety, taking into account:

(i) the seriousness of the alleged offense in terms of community protection, including the existence of any aggravating factors recognized by the Minnesota Sentencing Guidelines, the use of a firearm, and the impact on any victim;

(ii) the culpability of the child in committing the alleged offense, including the level of the child's participation in planning and carrying out the offense and the existence of any mitigating factors recognized by the Minnesota Sentencing Guidelines;

(iii) the child's prior record of delinquency;

(iv) the child's programming history, including the child's past willingness to participate meaningfully in available programming; and

(b) Proportionality. The principle that the disposition be proportional, that is, the least restrictive action consistent with the child's circumstances.

(2) Best Interests. A disposition must serve the best interests of the child, but this

does not supersede the requirement that the disposition be necessary. The promise of benefits in a disposition, or even the suggestion that a particular disposition is best for the child, does not permit a disposition that is not necessary.

(3) Out-of-Home Placement. Public policy mandates that the best interests of the child are normally served by parental custody. Where an out-of-home placement is being considered, the placement should be suitable to the child's needs. A placement that is not suited to the actual needs of the child cannot serve the child's best interests.

(4) Sanctions. Sanctions, such as post-adjudication placement in a secure facility, are appropriate where such measures are necessary to promote public safety and reduce juvenile delinquency, provided that the sanctions are fair and just, recognize the unique characteristics and needs of the child and give the child access to opportunities for personal and social growth. In determining whether to order secure placement, the court shall consider the necessity of protecting the public, protecting program residents and staff, and preventing juveniles with histories of absconding from leaving treatment programs. Other factors that may impact on what sanctions are necessary include: any prior adjudication for a felony offense against a person, prior failures to appear in court, or prior incidents of running away from home.

(5) Local Dispositional Criteria. The disposition should reflect the criteria used for determining delinquency dispositions in the local judicial district.

Subd. 3. Duration. A dispositional order transferring legal custody of the child pursuant to Minnesota Statutes ~~§ 260.185, subd.~~ section 260B.198, subdivision 1(c) shall be for a specified length of time. The court may extend the duration of a placement but only by instituting a modification proceeding pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 15.08. Orders for probation shall be for an indeterminate length of time unless otherwise specified by the court and shall be reviewed by the court at least annually.

Subd. 4. Continuance without Adjudication.

(A) *Generally.* When it is in the best interests of the child and the protection of the public to do so, the court may continue the case without adjudicating the child. The court may not grant a continuance without adjudication where the child has been designated an extended jurisdiction juvenile.

(B) *Child Not in Detention.* If the child is not held in detention, the court may continue the case without adjudication for a period not to exceed ninety (90) days from the ~~finding that the~~

~~charges have been proved~~date of disposition. The court may extend the continuance for an additional successive period not to exceed ninety (90) days.

(C) *Child in Detention*. If the child is held or is to be held in detention, the court may continue the case without adjudication and enter an order to hold the child in detention for a period not to exceed fifteen (15) days from the ~~finding that the charges in the charging document have been proved~~date of disposition. If the child is in detention, this continuance must be for the purpose of completing any consideration, or any investigation or examination ordered pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 15.03, ~~subd.~~subdivision 1. The court may extend this continuance and enter an order to hold the child in detention for an additional successive period not to exceed fifteen (15) days.

(D) *Dispositions During Continuance*. During any continuance without adjudication of delinquency, the court may enter a disposition order pursuant to Minnesota Statutes ~~§ 260.185, subd.~~, section 260B.198, subdivisions 1(a) or (b).

(E) *Adjudication after Continuance*. Adjudicating a child for an offense after initially granting a continuance without adjudication is a probation revocation and must be accomplished pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 15.07.

(F) *Termination of Jurisdiction*. A probation revocation proceeding to adjudicate the child on any allegation initially continued without adjudication must be commenced within the period prescribed by ~~Minnesota Rules of Juvenile Procedure~~ 15.05, ~~subd.~~subdivisions 4 (B) or (C), or juvenile court jurisdiction over the charges terminates.

RULE 15.06 INFORMAL REVIEW

The court shall review all disposition orders, except commitments to the Commissioner of Corrections, at least every six (6) months.

If, upon review, the court finds there is good cause to believe a modification of the disposition is warranted under ~~Minnesota Rules of Juvenile Procedure~~ 15.08, ~~subd.~~subdivision 8, the court may commence a modification proceeding pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 15.08.

RULE 15.07 PROBATION VIOLATION

Subd. 1. Commencement of Proceedings. Proceedings for revocation of probation may be commenced based upon a written report showing probable cause to believe the juvenile has violated any conditions of probation. Based upon the report, the court may issue a warrant as provided by ~~Minnesota Rules of Juvenile Procedure Rule 4.01~~4.03, or the court may schedule a review hearing and provide notice of the hearing as provided in ~~Minnesota Rules of Juvenile Procedure Rule 25~~. If the juvenile fails to appear in response to a summons, the court may issue a warrant.

(A) *Contents of Probation Violation Report.* The probation violation report and supporting affidavits, if any, shall include:

- (1) the name, date of birth and address of the child;
- (2) the name and address of the child's parent(s), legal guardian, or legal custodian;
- (3) the underlying offense or offenses and date(s) of offense for which violation of probation is alleged; and

(4) a description of the surrounding facts and circumstances upon which the request for revocation is based.

(B) *Notice.* The court shall give notice of the admit/deny hearing on the probation violation to all persons entitled to notice pursuant to ~~Minnesota Rules of Juvenile Procedure 25~~.

Subd. 2. Detention Hearing. If the child is detained pursuant to a warrant for immediate custody, detention is governed by ~~Minnesota Rules of Juvenile Procedure 5~~.

Subd. 3. Admit/Deny Hearing. The child shall either admit or deny the allegations of the of the probation violation report at the admit/deny hearing.

(A) *Timing.* The admit/deny hearing shall be held:

- (1) for a child in custody, at or before the detention hearing; or
- (2) for a child not in custody, within a reasonable time of the filing of the motion.

(B) *Advisory.* Prior to the child admitting or denying the violation, the court shall advise the child of the following:

- (1) that the child is entitled to counsel appointed at public expense at all stages of the proceedings;

(2) that, unless waived, a revocation hearing will be commenced to determine whether there is clear and convincing evidence that the child violated a dispositional order of the court and whether the court should change the existing dispositional order because of the violation;

(3) that before the revocation hearing, all evidence to be used against the child shall be disclosed to the child and the child shall be provided access to all official records pertinent to the proceedings;

(4) that at the hearing, both the prosecuting attorney and the child shall have the right to offer evidence, present arguments, subpoena witnesses, and call and cross-examine witnesses. Additionally, the child shall have the right at the hearing to present mitigating circumstances or other reasons why the violation, if proved, should not result in revocation; and

(5) that the child has the right of appeal from the determination of the court following the revocation hearing.

(C) *Denial.* If the child denies the allegations, the matter shall be set for a revocation hearing which shall be held in accordance with the provisions of ~~Minnesota Rules of Juvenile Procedure~~ 15.07, ~~subd.~~subdivision 4.

Subd. 4. Revocation Hearing.

(A) *Generally.* At the hearing, both the prosecuting attorney and the child shall have the right to offer evidence, present arguments, subpoena witnesses, and call and cross-examine witnesses, provided, however, that the child may be denied confrontation by the court when good cause is shown that a substantial risk of serious harm to others would exist if it were allowed. Additionally, the child shall have the right at the hearing to present mitigating circumstances or other reasons why the violation, if proved, should not result in revocation.

(B) *Timing.* The revocation hearing shall be held within seven (7) days after the child is taken into custody or, if the child is not in custody, within a reasonable time after the filing of the denial. If the child has allegedly committed a new offense, the court may postpone the revocation hearing pending disposition of the new offense whether or not the child is in custody.

(C) *Violation Not Proved.* If the court finds that a violation of the dispositional order has not been established by clear and convincing evidence, the revocation proceedings shall be dismissed, and the child shall continue under the dispositional order previously ordered by the court.

(D) *Violation Proved.* ~~The timing of dispositional orders in Probation Violation matters is governed by Rule 15.02.~~ If the court finds by clear and convincing evidence, or the child admits violating the terms of the dispositional order, the court may proceed as follows:

(1) order a disposition pursuant to ~~Minnesota Statutes § 260.185, section 260B.198;~~ or

(2) for a child who was previously granted a continuance without adjudication pursuant to ~~Minnesota Rules of Juvenile Procedure 15.05, subd. subdivision 4,~~ adjudicate the child and order a disposition pursuant to ~~Minnesota Statutes § 260.185, section 260B.198.~~

Rule 15.02 governs the timing of dispositional orders in probation violation matters.

RULE 15.08 OTHER MODIFICATIONS [no proposed amendments to subdivisions 2 and 4]

Subd. 1. Generally. ~~Minnesota Rules of Juvenile Procedure 15.08~~ governs the procedure to be followed when any party, including the court, seeks modification of a disposition.

Subd. 3. Motion for Modification. All modification proceedings, shall be commenced by the filing of a motion or petition to modify the disposition. The motion for modification shall be in writing and shall be served and filed along with accompanying affidavits, if any, in accordance with ~~Minnesota Rules of Juvenile Procedure 27.~~ The motion or its attachments shall state the proposed modification and the facts and circumstances supporting such a modification.

Subd. 5. Good Cause. Within ten (10) days of filing a motion or written request, the court shall determine from the written request or motion and accompanying affidavits, if any, whether there is good cause to believe that a modification of the disposition is warranted under ~~Minnesota Rules of Juvenile Procedure 15.08, subd. subdivision 8.~~ If the court finds that good cause exists the court shall schedule a modification hearing within ten (10) days of such finding and issue a notice in lieu of summons or a summons in accordance with ~~Minnesota Rules of Juvenile Procedure 15.08, subd. subdivision 6(A).~~ If the court finds that good cause does not exist, the court shall issue an order denying the motion or written request for modification.

Subd. 6. Summons and Warrant.

(A) *Summons.* Notice in lieu of summons or a summons to the modification hearing shall be served upon the child, the child's counsel, the prosecuting attorney, the parent(s), legal guardian or legal custodian of the child, and any agency or department with legal custody of or

supervisory responsibility over the child, pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 25. The summons shall be personally served upon the child.

(B) *Warrant*. The court may issue a warrant for immediate custody of a delinquent child or a child alleged to be delinquent if the court finds that there is probable cause to believe that:

~~(A)~~ the child has violated the terms of probation or a court order; and;

~~(B1)~~ the child failed to appear after having been personally served with a summons or subpoena, or reasonable efforts to personally serve the child have failed, or there is a substantial likelihood that the child will fail to respond to a summons; or

~~(C2)~~ the child or others are in danger of imminent harm; or

~~(D3)~~ the child has left the custody of the detaining authority without permission of the court.

Subd. 7. Hearing.

(A) *Timing*. Except in extraordinary circumstances, the hearing shall be held within twenty (20) days of the date of filing of the modification request.

(B) *Hearing*. The modification hearing shall be conducted in accordance with ~~Minnesota Rules of Juvenile Procedure~~ 15.04. The moving party bears the burden of proving that modification is warranted under ~~Minnesota Rules of Juvenile Procedure~~ 15.08, subd. subdivision 8 by clear and convincing evidence.

Subd. 8. Grounds for Modification. The court may order modification of the disposition after a hearing upon a showing that there has been a substantial change of circumstances such that the original disposition is:

(A) insufficient to restore the child to lawful conduct; or

(B) inconsistent with the child's actual rehabilitative needs.

The modification order shall comply with ~~Minnesota Rules of Juvenile Procedure~~ 15.05, subs-subdivisions 2 and 3.

Comments -- Rule 15

~~Dispositions and revocations~~The disposition for a child who has been designated an extended jurisdiction juvenile ~~are~~is also governed by Minn. R. Juv. P. 19.08 ~~and 19.09~~.

—Dispositional choices are enumerated in Minn. Stat. § ~~260.185~~260B.198, subs. 1 and ~~1a~~. ~~(1994)~~2 (2000). Probation revocation proceedings for a child who has been designated an extended jurisdiction juvenile are governed by Minn. R. Juv. P. 19.09.

Minn. R. Juv. P. 15.02, subd. 3 is intended to address the deficiency noted by various appellate decisions that the juvenile rules do not specify a sanction for violation of the time limits in this rule. See, In re the Welfare of C.T.T., 464 N.W.2d 751, 753 (Minn. Ct. App. 1991) pet. for rev. denied (Minn. Mar. 15, 1991); In re the Welfare of J.D.K., 449 N.W.2d 194, 196 (Minn. Ct. App. 1989).

~~Minn. Stat. § 260.121, subd. 2 (1994) authorizes transfer of a juvenile court file to the child's county of residence. This includes files in juvenile delinquency cases, and delinquency files include those where the delinquency petition requires commencement of extended jurisdiction juvenile proceedings under Minn. Stat. § 260.126 (Supp. 1995) and Minn.R.Juv.P. 19. See Minn.R.Juv.P. 19.06, subd. 3. When the receiving county has venue because of the child's residence under section 260.121, subd. 1 (1994), the statute provides no right of the receiving court to refuse the transfer. Upon transfer from the county of the child's residence to another county where the child is found, including the county where the offense occurred, the statute provides that the transfer is subject to the consent of the receiving court. Under the statute, the transferring court is to order a continuance and forward a certified copy of all papers filed, together with an order of transfer, to the court administrator of the receiving court. All subsequent proceedings in the transferred file must occur in the county to which the file has been transferred. See Minn.R.Juv.P. 19.06, subd. 3. As a result, in extended juvenile jurisdiction proceedings, the receiving court has venue for purposes of the juvenile disposition, the stayed criminal sentence, and any subsequent proceedings for revocation of the stay of sentence. Minn.R.Juv.P. 19.08 and 19.09. The receiving court may direct the filing of a new petition (or notice to appear in certain cases specified in the statute) or may proceed by accepting prior findings of the transferring court.~~

The juvenile court and court personnel should make every effort to utilize culturally-specific evaluation and assessment programs whenever predisposition reports for juveniles are ordered under Minn. R. Juv. P. 15.03. The juvenile court should also keep in mind possible cultural issues and biases when evaluating predisposition reports, particularly when a culture-specific evaluation

program is not available. See Minnesota Supreme Court Task Force on Racial Bias in the Judicial System, Final Report p. 46-47, 104, 108 (1994).

Before placing a child in a secure treatment facility the court may conduct a subjective assessment to determine whether the child is a danger to self or others or would abscond from a nonsecure facility or if the child's health or welfare would be endangered if not placed in a secure facility; conduct a culturally appropriate psychological evaluation which includes a functional assessment of anger and abuse issues; and conduct an educational and physical assessment of the juvenile. See Minn. Stat. § 260.185, subd. 1c. (Supp. 1995)260B.198, subd. 4 (2000).

When the child has counsel, counsel has the right and the duty to appear at and participate in the disposition hearing.

As a matter of due process, the child has the absolute right to call and cross-examine the authors of any reports, object to the competency of the evidence contained in the reports, and otherwise respond to any adverse facts contained therein. See, In Re the Welfare of N.W., 405 N.W.2d 512, 516-17 (Minn. Ct. App. 1987) (citing Scheibe v. Scheibe, 241 N.W.2d 100 (Minn. 1976); VanZee v. VanZee, 226 N.W.2d 865 (Minn. 1974); Stanford v. Stanford, 123 N.W.2d 187 (Minn. 1963)).

~~Although the~~The child and other participants in the disposition hearing have the right to cross-examine the authors of any written report, ~~that~~. However, Rules 15.03 and 15.04 do~~esdo~~ not mandate that the authors appear at the disposition hearing. Counsel may subpoena the authors of written reports for purposes of cross-examination.

Under Minn. R. Juv. P. 15.05, subd. 1, the decision to either adjudicate the child or grant a continuance without adjudication and the choice of disposition shall be made at the same time and in a single dispositional order. Accord Minn. R. Juv. P. 21.03, subd. 1. The purpose of this rule is to eliminate multiple appeals. Because both an adjudicatory order and a dispositional order are final, appealable orders, if the court adjudicates the child or grants a continuance without adjudication and then enters a dispositional order at a later date, the child is forced to appeal twice: once from the adjudicatory order and once from the dispositional order. By requiring the court to defer the adjudicatory decision until the time of disposition, the child can appeal both orders at the same time in one appeal.

Requiring that the adjudicatory decision be deferred until the time of disposition should also eliminate the problem that arose in In re the Welfare of M.D.S., 514 N.W.2d 308 (Minn. Ct. App.

1994). There, the juvenile court entered an order finding that the allegations of the petition had been proved. The order also stated that adjudication was withheld but only for the purpose of transferring the case to the child's home county for disposition and further proceedings. The child attempted to appeal the order finding that the allegations of the petition had been proved. The appellate court held that the order was not appealable because it neither adjudicated the child delinquent nor finally determined that adjudication was withheld. Because the juvenile court is prohibited from adjudicating the child or granting a continuance without adjudication until the time of disposition under Minn._R._Juv._P. 15.05, subd. 1, it should be clear that there can be no appeal of the finding that the allegations of the petition have been proved until after the court enters a dispositional order.

An order adjudicating a child delinquent prior to disposition is ineffective and not appealable. But the order becomes appealable as part of the disposition once a dispositional order is made. See, In re the Welfare of G.M., 533 N.W.2d 883, C9-95-812 (Minn. Ct. App. July 3, 1995).

A copy of the order adjudicating a child delinquent for committing felony-level criminal sexual conduct should be forwarded to the Bureau of Criminal Apprehension by the court in accordance with Minn.Stat. § ~~260.161, subd. 1a.(a)(1994)~~260B.171, subd. 2(a) (2000).

Minn._Stat. § ~~260.185~~260B.198, subd. 1 (~~1994~~)(2000) requires written findings on disposition in every case. Although this statute seemingly invades the province of the judiciary to govern its own procedures, Minn._R._Juv._P. 15.05, subd. 2(A) reiterates the statutory principle.

Minn._R._Juv._P. 15.05, subd. 2(B) recites some of the general principles relating to dispositions that have developed under Minnesota law.

a. The content of Minn._R._Juv._P. 15.05, subd. 2(B) is largely derived from Minn. Stat. § ~~260.011, subd. 2(c) (1994)~~260B.001, subd. 2 (2000); Minn._Stat. § ~~260.185, subd. 1 (1994)~~260B.198, subd. 1 (2000); Minn.Stat. § 260.185, subd. 1c. (Supp. 1995); In re Welfare of A.R.W. & Y.C.W., 268 N.W.2d 414, 417 (Minn. 1978) cert. den.denied 439 U.S. 989 (1978); In re the Welfare of D.S.F., 416 N.W.2d 772 (Minn. Ct. App. 1987) pet. for rev. denied (Minn. Feb. 17, 1988); and In re the Welfare of L.K.W., 372 N.W.2d 392 (Minn. Ct. App. 1985). See also Institute of Judicial Administration-American Bar Association, Juvenile Justice Standards: Standards Relating to Dispositions (1980). This rule does not create any substantive standards or limit the development of the law but is intended to assist the court when choosing a disposition by ~~focussing~~focusing on those standards that are already part of established Minnesota law. The court

is not required to make findings on each of these factors in every case, although such findings may be helpful in contentious cases.

b. The overriding purpose in every juvenile delinquency disposition, declared by statute, is to "promote the public safety and reduce juvenile delinquency by maintaining the integrity of the substantive law prohibiting certain behavior and by developing individual responsibility for lawful behavior." Minn. Stat. § ~~260.011~~260B.001, subd. 2(e) ~~(1994)~~(2000). This statute and another declare the means to be employed by the juvenile court to serve its public safety purpose. First, the purpose of the court "should be pursued through means that are fair and just, that recognize the unique characteristics and needs of children, and that give children access to opportunities for personal and social growth." Id. Second, the court is to employ dispositions that are "deemed necessary to the rehabilitation of the child." Minn. Stat. § ~~260.185~~260B.198, subd. 1 ~~(1994)~~(2000). Each judicial district, after consultation with local county attorneys, public defenders, corrections personnel, victim advocates, and the public, is required to have written criteria for determining delinquency dispositions developed by September 1, 1995. See 1994 Minn. Laws ch. 576, § 59.

Where appropriate, the court should make every effort to use any available culturally-specific programs when making a disposition for a juvenile. The court should also be aware of racial disparities in dispositions among similarly situated juveniles, particularly for those offenses which have historically resulted in more severe sanctions for minorities. See Minnesota Supreme Court Task Force on Racial Bias in the Judicial System, Final Report p. 103-04, 108-09.

Minn. R. Juv. P. 15.05 subd. 3 provides that a dispositional order that transfers legal custody of the child under Minn. Stat. § ~~260.185~~260B.198, subd. 1(c) ~~(1994)~~(2000) shall be for a specified length of time. See Minn. Stat. § ~~260.185~~, subd. 4 ~~(1994)~~260B.198, subd. 9 (2000).

The duration of a disposition that transfers custody of the child to the Commissioner of Corrections pursuant to Minn. Stat. § ~~260.185~~260B.198, subd. 1(d)~~(1994)~~(2000) is determined by the Commissioner. See; In re the Welfare of M.D.A.-v. State, 237 N.W.2d 827 (Minn. 1975).

"Withholding of adjudication" ~~has been~~was redesignated as "continuance without adjudication" to conform with the statutory language of Minn. Stat. § 260.185, subd. 3 (1994). Continuance without adjudication is now authorized by Minn. Stat. § ~~260.185~~, subd. ~~3~~260B.198, subd. 7. The court must find that the allegations of the petition have been proved before it can

continue a case without adjudication. Id. The court may not grant a continuance without adjudication in an extended juvenile jurisdiction proceeding. Id.

Continuance without adjudication (or withholding of adjudication) has a material ~~effect~~effect on a child's juvenile record. Prior to 1983, the Minnesota Sentencing Guidelines assigned one criminal history point for every two felony-level "juvenile adjudications-." See Minnesota Sentencing Guidelines II.B.4 (1982). In State v. Peterson, 331 N.W.2d 483 (Minn. 1983), the defendant claimed that it was error to use juvenile offenses for which there had been findings but no adjudication when calculating his criminal history score under the sentencing guidelines. The supreme court did not reach the defendant's argument but suggested that the Sentencing Guidelines Commission amend the guidelines to avoid the issue raised by defendant. Id. at 486. The guidelines were subsequently amended in 1983 to assign one criminal history point for every two felony-level offenses "committed and prosecuted as a juvenile", provided the juvenile court made findings pursuant to an admission or trial. Minnesota Sentencing Guidelines II.B.4 (1994~~2000~~). Because Minn. Stat. § ~~260.185, subd. 3~~260B.198, subd. 7 requires a finding that the juvenile committed the offense alleged in the petition before the court may continue the case without an adjudication, which finding satisfies the requirements of the sentencing guidelines for counting a juvenile offense in the criminal history score, a continuance without adjudication (or withholding of adjudication) will not exclude the juvenile offense from a subsequent criminal history score. See John O. Sonsteng, et. al. 12 Minnesota Practice at 443 ~~(1985)~~215 (1997). Continuance without adjudication may prevent the operation of some statutes which still require that the child be adjudicated delinquent. See, e.g., Minn. Stat. § ~~609.3461, subd. 1(3)~~(1994)609.117, subd. 1(3) (2000) (provision of biological specimens for DNA analysis); ~~and, for offenses committed before August 1, 1996, Minn. Stat. § 260.161, subd. 1a.(a)(1994) and 1996 Minn. Laws. Ch. 440, Art. 1, Sec. 46 (report of certain juvenile offenses to BCA).~~

~~Continuance~~A continuance without adjudication ~~and/or~~ continuance for dismissal under Minn. R. Juv. P. 14 are not the only options available for dealing with an alleged juvenile offender without formal process. ~~By July 1, 1995, every~~Every county attorney should have a pretrial diversion program established for certain juveniles subject to juvenile court jurisdiction, as an alternative to formal adjudication. See Minn. Stat. § 388.24 (~~Supp. 1995~~2000). With statutory pretrial diversion readily available for less serious juvenile offenders, presumably the use of

continuance without adjudication and continuance for dismissal under these rules will become less common.

~~Statutory law requires an administrative review of all placements in a residential facility (group home, family foster home, or other publicly supported out of home residential facility) every six months. Minn.Stat. § 257.071, subd. 2 (1994).~~

Much of Minn._R._Juv._P. 15.07 was taken from Minn._R._Crim._P. 27.04.

Unless all the parties agree to a proposed modification, the court may not order modification of the disposition after an informal review without commencing a modification proceeding pursuant to Minn._R._Juv._P. 15.08 in order to give the parties an opportunity to contest the proposed modification before it is imposed.

Under Minn._R._Juv._P. 15.08, subd. 2, the court is not required to hold a hearing to examine a modification agreement on the record in every case. But agreements to make upward modifications to a disposition will normally require a court appearance and approval on the record in order to ensure that the proposed modification complies with the law, and that the child appreciates the significance of the modification and voluntarily consents to the modification. The discretion to approve a modification without an appearance is intended to be reserved for relatively minor, usually downward, modifications.

Rule 15.08 does not apply to probation revocations, the procedure for which is governed by Rule 15.07.

Minn._Stat. § ~~260.145 (1994)~~260B.154 (2000) addresses the court's authority to issue a warrant for immediate custody for the child. Minn._Stat. § ~~260.165, subd. 1(d)~~(1994)260B.175, subd. 1(c) addresses the authority of a peace officer or probation officer to take a child into custody for allegedly violating the terms of probationary supervision.

Counsel for the child has the right and duty to appear at and participate in all probation revocation and modification proceedings and hearings. See Minn._R._Juv._P. 3.02, subd. 4.

RULE 16. POST-TRIAL MOTIONS

RULE 16.01 POST-TRIAL MOTIONS [no proposed amendments]

RULE 16.02 MOTION TO VACATE THE FINDING THAT THE ALLEGATIONS OF THE PETITION OR CHARGING DOCUMENT ARE PROVED [no proposed amendments]

RULE 16.03 JOINDER OF MOTIONS [no proposed amendments]

RULE 16.04 NEW TRIAL ON COURT'S OWN MOTION

The court, on its own motion, may order a new trial upon any of the grounds specified in ~~Minnesota Rules of Juvenile Procedure~~ 16.01, ~~subd.~~subdivision 1 within fifteen (15) days after the finding that the allegations of the charging document are proved and with the consent of the child.

Comment--Rule 16

References to "child's counsel" includes the child who is proceeding pro se. Minn._R._Juv. P. 1.01.

Minn._R._Juv._P. 16.01, subd. 3 provides that notice of a motion for a new trial shall be served within fifteen (15) days after the finding that the allegations of the charging document are proved, except for a motion for new trial based on the grounds of new evidence. Minn. Stat. § ~~260.281~~260B.411 provides for a different time for filing a motion for new trial which is premised on the discovery of new evidence. ~~1996 Minnesota Laws Ch. 408, Art. 6, Sec. 9.~~ There, a child must bring a motion for new trial based on new evidence within fifteen (15) days of the filing of the court's order for adjudication and disposition. Id. Motions for new trial brought on other grounds must be brought within fifteen (15) days after the finding that the allegations of the charging document are proved as provided by this rule. Minn._R._Juv._P. 16.01, subd. 3.

In re Welfare of D.N.,⁷ held that a juvenile must move for a new trial to raise an appealable issue on evidentiary rulings. In re Welfare of D.N., 523 N.W.2d 11, 13 (Minn. Ct. App. 1994), review denied (Minn. Nov. 29, 1994). It should be noted that D.N. was a child in need of protection or services and not a delinquent. The procedures for delinquent children are more closely aligned with the rules of adult criminal court.

RULE 17. JUVENILE PETTY OFFENDER AND JUVENILE TRAFFIC OFFENDER
RULE 17.01 SCOPE, APPLICATION AND GENERAL PURPOSE

~~Minnesota Rules of Juvenile Procedure~~ 17 applies to children alleged to be juvenile petty offenders as defined by Minnesota Statutes ~~§ 260.015, subd. 21,~~ section 260B.007, subdivision 16 or juvenile traffic offenders as defined by Minnesota Statutes ~~§ 260.193,~~ section 260B.225. The purpose of ~~Minnesota Rules of Juvenile Procedure~~ 17 is to provide a uniform and streamlined procedure for juvenile petty and juvenile traffic offenders which is sensitive to the fact that neither has the right to counsel at public expense, except as provided in Rule 3.02, subd. 5. Except as otherwise provided in this rule, the general rules of juvenile delinquency procedure apply to juvenile petty and juvenile traffic matters.

Subd. 1. Juvenile Petty Offender. A juvenile petty offender is a child who has committed a juvenile petty offense as defined by Minnesota Statutes, section 260B.007, subdivision 16.

~~(A) Juvenile Petty Offense.~~ A juvenile petty offense is

- ~~(1) a juvenile alcohol offense;~~
- ~~(2) a juvenile controlled substance offense;~~
- ~~(3) a juvenile tobacco offense;~~
- ~~(4) a violation of local ordinance which prohibits conduct by a child under age eighteen (18);~~
- ~~(5) a non-traffic misdemeanor level offense except for the following:~~
 - ~~(a) criminal contempt (Minnesota Statutes § 588.20);~~
 - ~~(a) fifth degree assault (Minnesota Statutes § 609.224);~~
 - ~~(b) domestic assault (Minnesota Statutes § 609.2242);~~
 - ~~(c) prostitution, soliciting/hiring a prostitute (Minnesota Statutes § 609.324);~~
 - ~~(d) third degree arson (Minnesota Statutes § 609.563);~~
 - ~~(e) negligent fires, dangerous smoking (Minnesota Statutes § 609.576);~~
 - ~~(f) dangerous weapons (Minnesota Statutes § 609.66); or~~
 - ~~(g) indecent exposure (Minnesota Statutes § 617.23).~~

~~(B) Excluded.~~ The following are not juvenile petty offenses:

- ~~(1) a traffic offense;~~
- ~~(2) a misdemeanor level offense if the juvenile court previously found that the child committed a misdemeanor, gross misdemeanor or felony; or~~

~~(3) a misdemeanor level offense if the juvenile court previously found that the child committed two or more prior misdemeanor level juvenile petty offenses on or after July 1, 1995.~~

~~(C) *Designation as Juvenile Petty Offender by Prosecuting Attorney.*—The prosecuting attorney may designate a child a juvenile petty offender despite the child's history of misdemeanor-level offenses under Minnesota Rules of Juvenile Procedure 17.01, subd. 1 (B)(3).~~

Subd. 2. Juvenile Traffic Offender. A juvenile traffic offender is any child alleged to have committed a traffic offense except those children under the jurisdiction of adult court as set forth below in Minnesota Rules of Juvenile Procedure 17.01, subd. ~~3~~provided in Minnesota Statutes, section 260B.225.

~~(A) *Traffic Offense.* A traffic offense is any violation of a state or local traffic law, ordinance, or regulation, or a federal, state or local water traffic law.~~

~~**Subd. 3. Children Under Jurisdiction of Adult Traffic Court.** A sixteen (16) or seventeen (17) year old child alleged to have committed one of the following offenses is under the jurisdiction of adult criminal court:~~

~~(A) a violation of Minnesota Statutes § 169.121 (drivers under the influence of alcohol or controlled substance) or Minnesota Statutes § 169.129 (aggravated driving while intoxicated) or any other misdemeanor and gross misdemeanor level traffic violations committed as part of the same behavioral incident; or~~

~~(B) a petty traffic misdemeanor which is not a part of the same behavioral incident of a misdemeanor being handled in juvenile court.~~

~~**RULE 17.02 ATTENDANCE AT HEARINGS AND PRIVACY**~~

~~— Governed by Minnesota Rules of Juvenile Procedure 2 ("Attendance at Hearings and Privacy") except that the court may not exclude a child charged with a juvenile petty or juvenile traffic offense from a hearing or any portion of a hearing on the grounds that it is the child's best interests unless the child is represented by counsel.~~

~~**RULE 17.03**~~**17.02 RIGHT TO COUNSEL** [no proposed amendments to subdivisions 2 and 4, but note that the rule has been renumbered]

Subd. 1. Generally. ~~A child alleged to be~~In any proceeding in which a child is charged as a juvenile petty offender or a juvenile traffic offender, the child or the child's parent may retain

~~private counsel, has the right to be represented by an attorney at any point throughout the proceedings but the child does not have the right to counsel at public expense, except:~~

~~(A) at a detention hearing when the child may be subject to out-of-home placement as provided in Minnesota Statutes, section 260B.235, subdivision 6; or~~

~~(B) in a proceeding to determine whether the child is competent to proceed as otherwise provided pursuant to Rule 3.02, subdivisions 3, 6 and 7.~~

~~(C) where a child charged with a misdemeanor offense is designated a juvenile petty offender by the prosecuting attorney as set forth in Minnesota Rules of Juvenile Procedure 17.01, subd 1(C).~~

~~(D) where out of home placement is a possible disposition such as under Minnesota Statutes § 260.195, subd. 4 for a child appearing on a third or subsequent juvenile alcohol or controlled substance offense. If the child is not represented by counsel, out of home placement is prohibited.~~

Subd. 3. For Appeal. A child adjudicated a juvenile petty offender or juvenile traffic offender does not have the right to counsel at public expense for the purposes of appeal except at the discretion of the Office of the State Public Defender as set out in Minnesota Rules of Juvenile Procedure 21.02, subd. subdivision 2.

RULE ~~17.04~~17.03 WARRANTS

~~Governed~~The issuance of warrants under this Rule is governed by Minnesota Rules of Juvenile Procedure 4 ("Warrants"); ~~except that the court may only issue a warrant for immediate custody of a juvenile petty or juvenile traffic offender or a child alleged to be a juvenile petty or juvenile traffic offender if the court finds that there is probable cause to believe that:~~

~~—— (A) the child has committed a juvenile petty offense as defined by Minnesota Statutes § 260.015, subd. 21 or a juvenile traffic offense as defined by Minnesota Statutes § 260.193; and~~

~~—— (B) the child failed to appear after having been personally served with a summons or subpoena, reasonable efforts to personally serve the child have failed, or there is a substantial likelihood that the child will fail to respond to a summons.~~

RULE 17.05 DETENTION

Governed by Minnesota Rules of Juvenile Procedure 5 ("Detention").

RULE ~~17.06~~17.04 THE CHARGING DOCUMENT AND NOTICE OF ARRAIGNMENT

A child shall be charged as a juvenile petty offender or juvenile traffic offender pursuant to ~~Minnesota Rules of Juvenile Procedure 6 ("Charging Document")~~ with proper notice given pursuant to ~~Minnesota Rules of Juvenile Procedure 25 ("Notice")~~. The time for an arraignment shall be the same as that for a delinquency proceeding.

RULE ~~17.07~~17.05 ARRAIGNMENT [no proposed changes to subdivisions 4, 5, and 6, but note that the rule has been renumbered]

Subd. 1. Generally. An arraignment is a hearing in which a child shall enter a plea of guilty or not guilty in the manner provided in ~~Minnesota Rules of Juvenile Procedure 17.08~~ 17.06.

Subd. 2. Timing. Upon the filing of a charging document, the court administrator shall promptly fix a time for arraignment and send notices pursuant to ~~Minnesota Rules of Juvenile Procedure 25~~. The time for an arraignment shall be the same as that for a delinquency proceeding, that is:

(A) *Child in Custody.* The child in custody may be arraigned at a detention hearing and shall be arraigned no later than five (5) days after the detention hearing. The child has the right to have a copy of the charging document for three (3) days before being arraigned.

(B) *Child Not in Custody.* The child not in custody shall be arraigned ~~within twenty (20) days after the child has been served with~~ no later than thirty (30) days after the filing of the charging document. The child has the right to have a copy of the charging document for three (3) days before being arraigned.

Subd. 3. Hearing Procedure. Children alleged to be juvenile petty offenders or juvenile traffic offenders may be arraigned as a group and shall be arraigned individually and confidentially upon request. At the start of the arraignment, the court shall inform the child(ren) of the following rights and possible dispositions:

(A) the right to remain silent;

(B) the right to counsel at any point throughout the proceedings ~~but not the~~ including the limited right to the appointment of counsel at public expense;

(C) the right to plead not guilty and have a trial in which the child is presumed innocent unless and until the prosecuting attorney proves the allegations beyond a reasonable doubt;

(D) the right of the child to testify on the child's own behalf;

(E) the right to call witnesses using the court's subpoena powers;

(F) *For a Juvenile Petty Offender.*

(1) the dispositions that may be imposed pursuant to Minnesota Statutes ~~§ 260.195, subs. 3, 3a and 4,~~ section 260B.235, subdivisions 4, 5 and 6 if the child pleads guilty or, after a trial, the court finds that the allegations of the charging document have been proven beyond a reasonable doubt; and

(2) if the offense is a second misdemeanor-level petty offense, the possibility that any same or similar offense will be charged as a misdemeanor in a delinquency petition;

(G) *For a Juvenile Traffic Offender.* The dispositions that may be imposed pursuant to Minnesota Statutes ~~§ 260.193, subd. 8,~~ section 260B.225, subdivision 9 if the child pleads guilty or, after a trial, the court finds that the allegations of the charging document have been proven beyond a reasonable doubt.

RULE ~~17.08~~17.06 PLEAS

Subd. 1. Plea of Guilty. Before the court accepts a plea of guilty, the court shall determine under the totality of the circumstances whether the child understands all applicable rights. The court shall on the record, or by written plea petition if the child is represented by counsel, determine:

(A) whether the child understands:

(1) the nature of the offense alleged;

(2) the right to the appointment of counsel if the child is subject to out-of-home placement as provided in Minnesota Statutes, section 260B.235, subdivision 6;

(3) the right to trial;

~~(3)~~(4) the presumption of innocence until the prosecuting attorney proves the charges beyond a reasonable doubt;

~~(4)~~(5) the right to remain silent;

~~(5)~~(6) the right to testify on the child's own behalf;

~~(6)~~(7) the right to confront witnesses against oneself;

~~(7)~~(8) the right to subpoena witnesses;

~~(8)~~(9) that the child's conduct constitutes ~~the act admitted~~ the offense to which the child pled guilty;

(B) whether the child makes any claim of innocence; and

(C) whether the plea is made freely, under no threats or promises other than those the parties have disclosed to the court.

Subd. 2. Plea of Not Guilty. Upon a plea of not guilty, the matter shall be set for trial and the court shall advise the child of the discovery procedures as set forth in ~~Minnesota Rules of Juvenile Procedure 17.10~~ 17.07.

Subd. 3. Withdrawal of Plea. The child may, on the record or by written motion filed with the court, request to withdraw a plea of guilty. The court may allow the child to withdraw a guilty plea:

(A) before disposition, for any just reason; ~~or~~

(B) at any time, if out-of-home placement is proposed based upon a plea or adjudication obtained without the assistance of counsel; or

~~(C) at any time~~after disposition, upon showing that withdrawal is necessary to correct a manifest injustice.

Subd. 4. Plea to a Lesser Offense or a Different Offense. With the consent of the prosecuting attorney and approval of the court, the child shall be permitted to enter:

(A) a plea of guilty to a lesser included offense or to an offense of a lesser degree; or

(B) a plea of guilty to a different offense than that alleged in the charging document.

A plea of guilty to a lesser included offense or to an offense of a lesser degree may be entered without an amendment of the charging document. If a plea to different offense is accepted, the charging document must be amended on the record or a new charging document must be filed with the court.

Subd. 5. Acceptance or Nonacceptance of Plea of Guilty and Future Proceedings.

The court shall make a finding within fifteen (15) days of the plea of guilty:

(A) that the plea has been accepted and the allegations in the charging document have been proved; or

(B) that the plea has not been accepted.

If the court accepts a plea of guilty and makes a finding that the allegations in the charging document have been proved, the court shall schedule further proceedings pursuant to ~~Minnesota Rules of Juvenile Procedure 17.14 ("Adjudication and Disposition")~~ 17.09.

~~**RULE 17.09 SETTLEMENT DISCUSSIONS AND PLEA AGREEMENTS**~~

~~Governed by Minnesota Rules of Juvenile Procedure 9 ("Settlement Discussions and Plea Agreements").~~

~~**RULE 17.10**~~ **17.07 DISCOVERY**

At the court's discretion, discovery may be conducted in the manner provided for delinquency proceedings pursuant to ~~Minnesota Rules of Juvenile Procedure 10 ("Discovery")~~. Otherwise discovery shall proceed as follows: The prosecuting attorney shall, as soon as possible, provide the child with copies of statements and police reports. At least ten (10) days before trial, the parties shall exchange the names of witnesses they intend to have testify at trial as well as exhibit lists.

~~**RULE 17.11**~~ **17.08 PRETRIAL AND OMNIBUS HEARING**

Upon request of either party, the court shall hold a pretrial and/or an omnibus hearing in the manner provided for delinquency proceedings pursuant to ~~Minnesota Rules of Juvenile Procedure 11 ("Pretrial Conference")~~ and ~~Minnesota Rules of Juvenile Procedure 12 ("Omnibus Hearing")~~.

~~**RULE 17.12 TRIAL**~~

~~The trial shall be held within the times and in the manner required for a delinquency proceeding as set forth in Minnesota Rules of Juvenile Procedure 13 ("Trials").~~

~~**RULE 17.13 CONTINUANCE FOR DISMISSAL**~~

~~Governed by Minnesota Rules of Juvenile Procedure 14 ("Continuance for Dismissal").~~

~~**RULE 17.14**~~ **17.09 ADJUDICATION AND DISPOSITION** [no proposed amendments to subdivision 1, but note that the rule has been renumbered]

Subd. 2. Adjudication and Disposition.

Within forty-five (45) days from the finding that the allegations of the charging document are proved, the court shall:

(A) *For a Juvenile Petty Offender.* Adjudicate the child a juvenile petty offender and order a disposition pursuant to Minnesota Statutes ~~§ 260.195, subs. 3, 3a and 4,~~ section 260B.235, subdivisions 4, 5, and 6.

(B) *For a Juvenile Traffic Offender.* Adjudicate the child a juvenile traffic offender and order a disposition pursuant to Minnesota Statutes ~~§ 260.193, subd. 8,~~ section 260B.225, subdivision 9.

The order may be in writing or on the record. If the order is on the record, the child may request written findings, and the court shall make and file written findings within seven (7) days of the request.

Subd. 3. Probation Revocation. Probation revocation proceedings shall be conducted in the same manner as delinquency probation violation proceedings pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 15.07 except for the following:

(A) *Warrant.* The court may only issue a warrant for immediate custody of a juvenile petty or juvenile traffic offender if the court finds that there is probable cause to believe that: the child failed to appear after having been personally served with a summons or subpoena, reasonable efforts to personally serve the child have failed, or there is a substantial likelihood that the child will fail to respond to a summons.

(B) *Advisory.* Prior to the child admitting or denying the allegations in the probation violation report, the court shall advise the child of the following:

(1) that, at all stages of the proceedings, the child has the right to be represented by counsel but does not have the right to counsel ~~appointed~~ at public expense, unless the child is subject to out-of-home placement;

(2) that, unless waived, a revocation hearing will be commenced to determine whether there is clear and convincing evidence that the child violated a dispositional order of the court and whether the court should change the existing dispositional order because of the violation.

(3) that before the revocation hearing, all evidence to be used against the child shall be disclosed to the child and the child shall be provided access to all official records pertinent to the proceedings.

(4) that at the hearing, both the prosecuting attorney and the child shall have the right to offer evidence, present arguments, subpoena witnesses, and call and cross-examine witnesses, provided, however, that the child may be denied confrontation by the court when good cause is shown that a substantial risk of serious harm to others would exist if it were allowed. Additionally, the child shall have the right at the hearing to present mitigating circumstances or other reasons why the violation, if proved, should not result in revocation.

(5) that the child has the right of appeal from the determination of the court following the revocation hearing.

(C) *Violation Proved.* If the court finds by clear and convincing evidence, or the child admits violating the terms of the dispositional order, the court may order a disposition pursuant to Minnesota Statutes ~~§ 260.195, subd. 3, 3a or 4,~~ section 260B.235, subdivisions 4, 5, and 6 for a juvenile petty offender or a disposition pursuant to Minnesota Statutes ~~§ 260.193, subd. 8,~~ section 260B.225, subdivision 9 for a juvenile traffic offender.

Subd. 4. Other Modifications. Other modification proceedings shall be conducted in the same manner as delinquency modification proceedings pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 15.08 except that the court may not order a delinquency disposition. For a juvenile petty offender, the court may order a disposition pursuant to Minnesota Statutes ~~§ 260.195, subds. 3, 3a and 4,~~ section 260B.235, subdivisions 4, 5, and 6 and for a juvenile traffic offender, the court may order a disposition pursuant to Minnesota Statutes ~~§ 260.195, subd. 8,~~ section 260B.225, subdivision 9. The modification order may be in writing or on the record. If the order is on the record, the child may request written findings, and the court shall make and file written findings within seven (7) days of the request.

~~RULE 17.15 POST-TRIAL MOTIONS~~

~~Governed by Minnesota Rules of Juvenile Procedure 16 ("Post-trial Motions").~~

~~RULE 17.16~~17.10 TRANSFER TO ADULT COURT OF JUVENILE TRAFFIC MATTER

[no proposed amendments to rule, but note that the rule has been renumbered]

~~RULE 17.17~~17.11 CHILD INCOMPETENT TO PROCEED

If a child is believed to be incompetent to proceed, the court may ~~either~~ proceed according to ~~Minnesota Rules of Juvenile Procedure 20 ("Child Incompetent to Proceed")~~, direct that civil commitment proceedings be initiated, direct that Child in Need of Protection or Services (CHIPS) proceedings be initiated or dismiss the case.

~~RULE 17.18 APPEALS~~

~~Governed by Minnesota Rules of Juvenile Procedure 21 ("Appeals").~~

~~RULE 17.19 GENERAL APPLICATION OF OTHER RULES~~

~~Minnesota Rules of Juvenile Procedure 22 through 31 apply to juvenile petty and juvenile traffic matters.~~

Comment--Rule 17

In 1995, the legislature expanded the definition of "juvenile petty offense." Pursuant to Minn. Stat. § 260.015, subd. 21 (Supp. 1995), a juvenile petty offense ~~includes~~included the following:

- (a) a juvenile alcohol offense;
 - (b) a juvenile controlled substance offense;
 - (c) a violation of section 609.685;
 - (d) a violation of a local ordinance, which by its terms prohibits conduct by a child under the age of 18 years which would be lawful conduct if committed by an adult;
 - (e) an offense, other than a violation of section 609.224, 609.324, 609.563, 609.576, or 617.23, that would be a misdemeanor if committed by an adult if:
 - (1) the child has not been found to be a juvenile petty offender on more than two prior occasions for a misdemeanor-level offense;
 - (2) the child has not previously been found to be delinquent for a misdemeanor, gross misdemeanor, or felony offense; or
 - (3) the county attorney designates the child on the petition as a juvenile petty offender, notwithstanding the child's prior record of misdemeanor-level juvenile petty offenses.
- Minn. Stat. § 260.015, subd. 21 (Supp. 1995).

This definition of juvenile petty offense ~~applies~~applied to crimes committed on or after July 1, 1995. 1995 Minn. Laws Ch. 226, Art. 3, Sec. 65.

In 1996, the legislature again revised the definition of "juvenile petty offense." Pursuant to 1996 Minn. Laws Ch. 408, Art. 6, Sec. 1, a juvenile petty offense ~~includes~~included:

- (a) a juvenile alcohol offense;
- (b) a juvenile controlled substance offense;
- (c) a violation of section 609.685;
- (d) a violation of local ordinance, which by its terms prohibits conduct by a child under the age of 18 years which would be lawful conduct if committed by an adult; and
- (e) an offense that would be a misdemeanor if committed by an adult, except:

- (1) a misdemeanor-level violation of section 588.20, 609.224, 609.2242, 609.324, 609.563, 609.576, 609.66, or 617.23;

- (2) a major traffic offense or an adult court traffic offense, as described in section 260.193;

- (3) a misdemeanor-level offense committed by a child whom the juvenile court previously has found to have committed a misdemeanor, gross misdemeanor, or felony offense; or

- (4) a misdemeanor-level offense committed by a child whom the juvenile court has found to have committed a misdemeanor-level juvenile petty offense on two or more prior occasions, unless the county attorney designates the child on the petition as a juvenile petty offender notwithstanding this prior record. As used in this clause, "misdemeanor-level juvenile petty offense" ~~includes~~included a misdemeanor-level offense that would have been a juvenile petty offense if it had been committed on or after July 1, 1995. 1996 Minn. Laws Ch. 408, Art. 6, Sec. 1.

This definition of juvenile petty offense ~~applies~~applied to crimes committed on or after August 1, 1996. 1996 Minn. Laws Ch. 408, Art. 6, Sec. 13. Minn. R. Juv. P. 17.01, subd. 1 ~~reflects~~reflected the definition of "juvenile petty offense" set forth pursuant to 1996 Minn. Laws Ch. 408, Art. 6, Sec. 1. However, because this definition often changed, Rule 17.01, subd. 1 now refers to the applicable statute. See Minn. Stat. § 260B.007, subd. 16 (2000).

The legislature reorganized the law relating to juvenile delinquency and child protection in 1999. 1999 Minn. Laws Ch. 139, Art. 4. This recodification is found in Minn. Stat. §§ 260B.001-260B.446 for juvenile delinquency.

Minn._Stat. § ~~260.193~~260B.225, subd. 2 (~~1994~~)(2000) provides that the prosecutor may allege the child is delinquent based upon a traffic offense but the court must find as a further fact that the child is delinquent within the meaning and purpose of the laws relating to juvenile court. ~~Minn._Stat. § 260.193, subd. 2 (1994).~~ Such matter shall be initiated and shall proceed in the same manner as any other delinquency. ~~Id.~~

At the arraignment, the court may inform ~~the child(ren)~~each child of ~~their~~his or her rights and the possible consequences by reading and having each child sign a sheet outlining ~~their~~those rights. A suggested form for this rights sheet is included in the appendix of forms, following these rules.

Minn._R._Juv._P. ~~17.16~~17.10 is based on Minn._Stat. § ~~260.193~~260B.225, subd. 7 (~~1994~~)(2000), which provides that the juvenile court may transfer a juvenile traffic offender case to adult court after a hearing if the juvenile court finds that the welfare of the child or public safety would be better served under the laws relating to adult traffic matters.

The right to appeal is set forth in Minn._Stat. § ~~260.291 (Supp. 1995)~~260B.415, subd. 1 (2000).

RULE 18. CERTIFICATION OF DELINQUENCY MATTERS

RULE 18.01 APPLICATION

Subd. 1. Generally. This rule is applicable when the prosecutor moves for certification and a child is alleged to have committed, after becoming fourteen (14) years of age, an offense that would be a felony if committed by an adult.

Subd. 2. First Degree Murder Accusation. The district court has original and exclusive jurisdiction in criminal proceedings concerning a child alleged to have committed murder in the first degree after becoming sixteen (16) years of age. Upon the filing of a complaint or indictment charging a sixteen (16) or seventeen (17) year old child in adult proceedings with the offense of first degree murder, juvenile court jurisdiction terminates for all proceedings arising out of the same behavioral incident.

RULE ~~18.01~~18.02 INITIATION OF CERTIFICATION PROCEEDINGS OF DELINQUENCY MATTERS

Subd. 1. Generally. Proceedings to certify delinquency matters pursuant to Minnesota Statutes ~~§ 260.125~~, section 260B.125 may be initiated upon motion of the prosecuting attorney after a delinquency petition has been filed. The motion may be made at the first appearance of the child pursuant to ~~Minnesota Rules of Juvenile Procedure 5 or 7^{1/2}~~, or within ten (10) days of the first appearance or before jeopardy attaches, whichever of the latter two occurs first. The motion shall be in writing and comply with the provisions of Rule 27, and shall include a statement of the grounds supporting the certification.

~~The motion shall be in writing and comply with the provisions of Minnesota Rules of Juvenile Procedure 27, and shall include a statement of the grounds supporting the certification. Within ten (10) days after the motion is made, the prosecuting attorney shall file with the court a statement of intent to prosecute the accusation if the proceedings are certified, which statement shall be signed by the prosecutor in the county which has jurisdiction over the offense. The court shall dismiss the certification motion if the statement of intent to prosecute is not timely filed.~~

Subd. 2. First Degree Murder Accusation. When the delinquency petition that is the basis for the motion for certification alleges that a child under age sixteen (16) committed the offense of murder in the first degree, the prosecuting attorney shall present the case to the grand jury for consideration of an indictment under Minnesota Statutes, chapter 628 within fourteen (14) days after the petition is filed.

RULE ~~18.02~~18.03 NOTICE OF CERTIFICATION

Notice of the initial appearance under ~~Minnesota Rules of Juvenile Procedure, 18.04 subd. 18.05, subdivision~~ 2 together with a copy of the motion for certification and a copy of the delinquency petition shall be served pursuant to ~~Minnesota Rules of Juvenile Procedure 25~~.

RULE ~~18.03~~18.04 CERTIFICATION STUDY [no proposed amendments to subdivisions 1 and 3, but note that the rule has been renumbered]

Subd. 2. Content of Reports. If the person preparing the report includes a recommendation on the court's actions; (a) the report shall address each of the public safety considerations of ~~Minnesota Rules of Juvenile Procedure 19.05, subd. 18.06, subdivision~~ 3; and (b)

the report shall address all options of the trial court under ~~Minn. R. Juv. P. 18.06~~ Rule 18.07, namely; (i) certification; (ii) retention of jurisdiction for extended jurisdiction juvenile proceedings; and (iii) retention of juvenile court jurisdiction in nonpresumptive certification cases.

Subd. 4. Filing and Access to Reports. The person(s) making a study shall file a written report with the court and provide copies to the prosecuting attorney and the child's counsel four (4) days, excluding Saturdays, Sundays and legal holidays, prior to the time scheduled for the hearing. The reports shall otherwise be confidential.

Subd. 5. Admissibility. Any matters disclosed by the child to the examiner during the course of the study may not be used as evidence or the source of evidence against the child ~~regarding the issue of guilt~~ in any subsequent trial.

RULE 18.04 18.05 HEARING

Subd. 1. In General.

(A) *Limited Public Access.* The court shall exclude the general public from certification hearings and shall admit only those persons who, in the discretion of the court, have a direct interest in the case or the work of the court, including victims. The court shall open the hearings to the public in certification proceedings where the child is alleged to have committed an offense or has been proven to have committed an offense that would be a felony if committed by an adult and the child was at least sixteen (16) years of age at the time of the offense, except that the court may exclude the public from portions of a certification hearing to consider psychological material or other evidence that would not be accessible to the public in an adult proceeding.

(B) *Timing.* The certification hearing shall be held within thirty (30) days of the filing of the certification motion. Only if good cause is shown by the prosecuting attorney or the child may the court extend the time for a hearing for another sixty (60) days. Unless the child waives the right to the scheduling of the hearing within specified time limits, if the hearing is not commenced within thirty (30) days, or within the extended period ordered pursuant to this subdivision, the child, except in extraordinary circumstances, shall be released from custody subject to such nonmonetary release conditions as may be required by the court under ~~Minnesota Rules of Juvenile Procedure 5~~.

(C) *Waiver.* The child may waive the right to a certification hearing provided that the child does so knowingly, voluntarily, and intelligently on the record after being fully and effectively informed of the right to a certification hearing by counsel. In determining whether the child has

knowingly, voluntarily, and intelligently waived this right the court shall look at the totality of the circumstances. These circumstances include but are not limited to: the presence of the child's parent(s), legal guardian, legal custodian or guardian ad litem; and the child's age, maturity, intelligence, education, experience, and ability to comprehend the proceedings and consequences.

(D) *Discovery*. The child and prosecuting attorney are entitled to discovery pursuant to ~~Minnesota Rules of Juvenile Procedure 10~~.

Subd. 2. Initial Appearance in Certification Proceeding. At the initial appearance following the motion for certification the court shall:

(A) verify the name, age and residence of the child who is the subject of the matter;

(B) determine whether all necessary persons are present and identify those present for the record;

(C) appoint counsel, if not previously appointed;

(D) determine whether notice requirements have been met and if not whether the affected persons waive notice;

(E) schedule further hearings including: a probable cause hearing, unless waived; the certification hearing under ~~Minnesota Rules of Juvenile Procedure 18.04~~, subd. 18.05 subdivision 4; and a pre-hearing conference if requested; and

(F) order studies pursuant to ~~Minnesota Rules of Juvenile Procedure 18.03~~18.04, if appropriate.

Subd. 3. Probable Cause Determination.

(A) *Timing*. Unless waived by the child or based upon an indictment, a hearing and court determination on the issue of probable cause shall be completed within fourteen (14) days of filing the certification motion. The court may, on the record, extend this time for good cause.

(B) *Standard*. A showing of probable cause to believe the child committed the offense alleged by the delinquency petition shall be made pursuant to Minnesota Rules of Criminal Procedure 11.

(C) *Presumption*. Upon a finding of probable cause, the court shall determine whether the presumption for certification under ~~Minnesota Rules of Juvenile Procedure 18.05~~, subd. 18.06, subdivision 1 applies.

(D) *Waiver*. The child may waive a probable cause hearing and permit a finding of probable cause without a hearing, provided that the child does so knowingly, voluntarily, and intelligently on

the record after being fully and effectively informed of the right to a probable cause hearing by counsel.

Subd. 4. Conduct and Procedure for Certification Hearing.

(A) *Hearing Rights.* The child's counsel and the prosecuting attorney shall have the right to:

- (1) present evidence;
- (2) present witnesses;
- (3) cross-examine witnesses; and
- (4) present arguments for or against certification.

(B) *Evidence.* All evidence considered by the court on the certification question shall be made a part of the court record. The court may receive any information, except privileged communication, that is relevant to the certification issue, including reliable hearsay and opinions.

(C) *Order of Hearing; Presumptive Certification.*

(1) The child's counsel may make an opening statement, confining the statement to the facts that the child expects to prove.

(2) The prosecuting attorney may make an opening statement, or may make it immediately before offering evidence. The statement shall be confined to the facts expected to be proved.

(3) The child's counsel shall offer evidence against certification.

(4) The prosecuting attorney may offer evidence in support of the motion for certification.

(5) The child's counsel may offer evidence in rebuttal of the evidence for certification, and the prosecuting attorney may then offer evidence in rebuttal of the child's rebuttal evidence. In the interests of justice, the court may permit either party to offer additional evidence.

(6) At the conclusion of the evidence, the prosecuting attorney may make a closing argument.

(7) The child's counsel may make a closing argument.

(D) *Order of Hearing; Non-presumptive Certification.*

(1) The prosecuting attorney may make an opening statement, confining the statement to the facts that the prosecutor expects to prove.

(2) The child's counsel may make an opening statement, or may make it immediately before offering evidence. The statement shall be confined to a statement of the defense and the facts expected to be proved.

(3) The prosecuting attorney shall offer evidence in support of certification, or alternatively, designation as an extended jurisdiction juvenile proceeding.

(4) The child's counsel may offer evidence in defense of the child.

(5) The prosecuting attorney may offer evidence in rebuttal of the defense evidence, and the child's counsel may then offer evidence in rebuttal of the prosecuting attorney's rebuttal evidence. In the interests of justice the court may permit either party to offer additional evidence.

(6) At the conclusion of the evidence, the prosecuting attorney may make a closing argument.

(7) The child's counsel may make a closing argument.

(E) *Burdens of Proof.* In a presumptive certification hearing under ~~Minnesota Rules of Juvenile Procedure 18.05, subd. 18.06, subdivision 1~~, the child shall have the burden to prove by clear and convincing evidence that retaining the proceeding in juvenile court serves public safety. In non-presumptive certification hearings under ~~Minnesota Rules of Juvenile Procedure 18.05, subd. 18.06, subdivision 2~~, the prosecuting attorney shall have the burden to prove by clear and convincing evidence that retaining the proceeding in juvenile court does not serve public safety.

RULE ~~18.05~~18.06 CERTIFICATION DETERMINATION [no proposed amendments to subdivisions 2 and 3]

Subd. 1. Presumption of Certification. Pursuant to Minnesota Statutes ~~§ 260.125, subd. 2a. (1994), section 260B.125, subdivision 3~~, it is presumed that a child will be certified for action under the laws and court procedures controlling adult criminal violations if:

(A) the child was sixteen (16) or seventeen (17) years old at the time of the offense;

(B) the delinquency petition alleges that the child committed an offense that would result in a presumptive commitment to prison under the sentencing guidelines and applicable statutes, or a felony offense in which the child allegedly used a firearm; and

(C) probable cause has been determined pursuant to ~~Minnesota Rules of Juvenile Procedure 18.04 subd. 18.05, subdivision 3~~.

The presumption of certification is overcome if it is rebutted by the child's showing of if the child demonstrates by clear and convincing evidence demonstrating that retaining the proceedings in juvenile court serves public safety.

Subd. 4. Prior Certification. The court shall order certification in any felony case if the prosecutor shows that the child was previously prosecuted and convicted in adult proceedings that were certified pursuant to Minnesota Statutes ~~§ 260.125, subd. 3a,~~ section 260B.125, subdivision 5.

Subd. 5. Extended Juvenile Court Jurisdiction.

(A) *Presumptive Certification.* If the juvenile court does not order certification in a presumptive certification case in which certification is presumed, the court shall designate the proceeding an extended jurisdiction juvenile prosecution.

(B) *Non-presumptive Certification.* If the court does not order certification in a non-presumptive certification case in which certification is not presumed, the court may consider designating the proceeding an extended jurisdiction juvenile prosecution. Designation as an extended jurisdiction juvenile prosecution may only occur if the prosecuting attorney has shown by clear and convincing evidence that the designation would serve public safety, taking into account the factors specified in ~~Minnesota Rules of Juvenile Procedure 18.05, subd. 18.06,~~ subdivision 3. Absent this showing the case shall proceed as a ~~regular~~ delinquency proceeding in juvenile court.

RULE ~~18.06~~18.07 ORDER

Subd. 1. Decision, Timing, and Content of Order Following Waiver of Certification Hearing and Stipulation to Certification Order. When a child waives the right to a certification hearing and stipulates to entry of a certification order, the court shall, within five (5) days of that hearing, enter an order with written findings of fact and conclusions of law that state:

(A) that adult court prosecution is to occur on the alleged offense(s) specified in the certification order;

(B) a finding of probable cause in accordance with Rule 18.05, subdivision 3, unless the accusation was presented by means of an indictment;

(C) findings of fact as to:

(1) the child's date of birth; and

(2) the date of the alleged offense; and

(D) if the child is currently being detained, that:

(1) the child be detained in an adult detention facility; and
(2) the child be brought before the appropriate court (as determined pursuant to Rule 18.08) without unnecessary delay, and in any event, not more than thirty-six (36) hours after issuance of the certification order, exclusive of the day of issuance, Sundays, or legal holidays, or as soon thereafter as a judge is available.

Subd. 2. Decision, Timing, and Content of Order Following Contested Hearing.

Within fifteen (15) days of the certification hearing the court shall enter an order with written findings of fact and conclusions of law as set forth in this subdivision.

(A) *Certification of the Alleged Offense for Prosecution under the Criminal Laws.* If the court orders a certification for adult prosecution, the order shall state:

(1) that adult court prosecution is to occur on the alleged offense(s) specified in the certification order;

(2) a finding of probable cause in accordance with ~~Minnesota Rules of Juvenile Procedure 18.04, subd. 18.05, subdivision~~ 3 unless the accusation was presented by means of an indictment;

(3) findings of fact as to:

(a) the child's date of birth;

(b) the date of the alleged offense;

(c) why the court upheld the presumption of certification under ~~Minnesota Rules of Juvenile Procedure 18.05, subd. 18.06, subdivision~~ 1 or, if the presumption of certification does not apply but the court orders certification, why public safety, as defined in ~~Minnesota Rules of Juvenile Procedure 18.05, subd. 18.06, subdivision~~ 3, is not served by retaining the proceeding in juvenile court; and

(4) if the child is currently being detained, that (a) the child be detained in an adult detention facility, and (b) the child be brought before the appropriate court (as determined pursuant to ~~Minnesota Rules of Juvenile Procedure 18.07~~18.08) without unnecessary delay, and in any event, not more than thirty-six (36) hours after issuance of the certification order, exclusive of the day of issuance, Sundays or legal holidays or as soon thereafter as a judge is available.

(B) *Retention of Jurisdiction by Juvenile Court as an Extended Jurisdiction Juvenile.*

(1) If the court does not order certification in a presumptive certification case ~~where the presumption of certification applies~~, the court shall designate the proceeding an extended

jurisdiction juvenile ~~ease~~prosecution. The order shall state why certification is not ordered with specific reference as to why designation as an extended jurisdiction juvenile prosecution serves public safety under the factors listed in ~~Minnesota Rules of Juvenile Procedure 18.05, subd.18.06, subdivision 3.~~

(2) If the court does not order certification in a non-presumptive certification case ~~where the presumption of certification does not apply~~, the court may designate the proceeding an extended jurisdiction juvenile ~~ease~~prosecution pursuant to ~~Minnesota Rules of Juvenile Procedure 18.05, subd.18.06, subdivision 5(B).~~ The order shall state why certification was not ordered and why the proceeding was designated as an extended jurisdiction juvenile prosecution.

If the court designates the case as an extended jurisdiction juvenile ~~proceeding~~prosecution, the case shall proceed pursuant to ~~Minnesota Rules of Juvenile Procedure 19.07 19.09.~~

(C) *Retention of Jurisdiction by Juvenile Court.* If the court ~~decides~~does not ~~to~~ order certification or extended jurisdiction juvenile prosecution in a non-presumptive certification case, the order shall state why certification or extended jurisdiction juvenile prosecution was not ordered with specific reference to why retention of the matter in juvenile court serves public safety, considering the factors listed in ~~Minnesota Rules of Juvenile Procedure 18.05, subd.18.06, subdivision 3.~~ Further proceedings shall be held pursuant to ~~Minnesota Rules of Juvenile Procedure 7.~~

~~(D) *Time Spent in Custody.* Upon ordering certification or retention as an extended jurisdiction juvenile proceeding, the court shall designate the time spent by the child in custody in connection with the offense or behavioral incident on which further proceedings are to occur. Such time shall be automatically deducted from a subsequent sentence in compliance with the provisions of Minnesota Rules of Criminal Procedure 27.03, subd. subdivision 4(B).~~

Subd. 23. Delay. For good cause, the court may extend the time period to file its order for an additional fifteen (15) days. If the order is not entered within fifteen (15) days, or within the extended period ordered by the court pursuant to this subdivision, the child, except in extraordinary circumstances, shall be released from custody subject to such nonmonetary release conditions as may be required by the court under ~~Minnesota Rules of Juvenile Procedure 5.~~

Subd. 34. Final Order. ~~This order shall constitute~~ Any order issued pursuant to this rule is a final order.

RULE ~~18.07~~18.08 TERMINATION OF JURISDICTION UPON CERTIFICATION [no proposed change to subdivision 1, but note that rule has been renumbered]

Subd. 2. Child in Detention. If the child is detained at the time certification is ordered:

(A) If the alleged offense was committed in the same county where certification is ordered, juvenile court jurisdiction terminates immediately and the prosecuting attorney shall file an appropriate adult criminal complaint at or before the time of the next appearance of the child that is stated in the certification order pursuant to ~~Minnesota Rules of Juvenile Procedure 18.06, subd. 1(A)(4)~~ 18.07, subdivision 2(A)(4).

(B) If the alleged offense was committed in a county other than where certification is ordered, juvenile court jurisdiction terminates in ~~ten (10)~~five (5) days or before if the prosecuting attorney files a complaint as provided under Minnesota Rules of Criminal Procedure 2. If juvenile court jurisdiction has terminated under this subsection before an appearance of a detained child following issuance of an order certifying the case, the appearance shall constitute a first appearance in criminal proceedings as provided in the Minnesota Rules of Criminal Procedure. If juvenile court jurisdiction has not terminated by the time a detained juvenile first appears following issuance of an order certifying, the juvenile court shall determine conditions of release in accordance with the provisions of Minnesota Rules of Criminal Procedure 5.05 and 6; for these purposes, the juvenile court petition shall serve in lieu of a criminal complaint as the charging instrument.

Subd. 3. Stay. Notwithstanding the preceding provisions of subdivisions 1 and 2, certification and the termination of juvenile court jurisdiction may be stayed as provided in ~~Minnesota Rules of Juvenile Procedure 21.03, subd. subdivision~~ 3.

~~RULE 18.08 FIRST DEGREE MURDER ACCUSATION~~

~~Subd. 1. Child Ages 16 or 17.~~ ~~Upon the filing of a complaint or indictment charging a sixteen (16) or seventeen (17) year old child in adult proceedings with the offense of first degree murder, juvenile court jurisdiction terminates all proceedings arising out of the same behavioral incident.~~

~~Subd. 2. Child Under Age 16.~~ ~~When a motion for certification has been filed in a case in which the juvenile petition alleges that a child under age sixteen (16) committed the offense of murder in the first degree, the prosecuting attorney shall present the case to the grand jury for~~

consideration of an indictment under Minnesota Statutes, ch. 628 within fourteen (14) days after the petition is filed.

RULE 18.09 WITHDRAWAL OF WAIVER OF CERTIFICATION HEARING

Subd. 1. General Procedure. A child may bring a motion to withdraw the waiver of certification hearing and stipulation to certification order:

(A) within fifteen (15) days of the filing of the order for certification, upon showing that it is fair and just to do so; or

(B) at any time prior to trial, upon showing that withdrawal is necessary to correct a manifest injustice.

The motion shall be made in the juvenile court that entered the certification order. A motion shall also be filed for a stay of proceedings in the adult court to which the case was certified.

Subd. 2. Basis for Motion. The motion shall state with particularity one of the following bases for granting withdrawal of waiver:

(A) the waiver was not knowingly, voluntarily, and intelligently made;

(B) the child alleges ineffective assistance of counsel; or

(C) withdrawal of waiver is appropriate in the interests of justice.

Subd. 3. Timing and Effect of Hearing. A hearing shall be held within fifteen (15) days of the filing of the motion. Following the hearing, if the court grants the motion to withdraw the waiver of certification hearing: 1) the court shall vacate the order for certification, and proceedings will resume in juvenile court pursuant to Rule 18; and 2) the court shall review the order for custody or conditions of release. If the court denies the motion to withdraw the waiver for certification hearing, the certification order shall remain in effect, and proceedings will resume in adult court.

Comment--Rule 18

~~The 1983 juvenile rules contemplate bringing a petition for reference (now "certification") after a petition for delinquency has been filed but before the arraignment occurs. In re Welfare of J.G.B., 443 N.W.2d 867, 871 (Minn. Ct. App. 1989) (reference petition after arraignment was reason for delay that weighed against prosecution in speedy trial analysis).~~

Pursuant to Minn. Stat. § 260.125, subd. 3b. (1994) 260B.125, subd. 6(2000), on a proper motion, the court may hold a certification hearing for an adult charged with a juvenile offense if:

(1) the adult was alleged to have committed an offense before his or her 18th birthday; and
(2) a petition was timely filed under Minn._Stat. §§ ~~260.131~~260B.141 (2000) and 628.26 (Supp. ~~1995~~2001). The court may not certify the matter if the adult demonstrates that the delay was purposefully caused by the state in order to gain an unfair advantage. See also In the Matter of the re Welfare of A.N.J., 521 N.W.2d 889, 891 (Minn. Ct. App. 1994). Juvenile court retains jurisdiction to hear a ~~reference~~certification motion filed after the child's 19th birthday provided a delinquency petition has been timely filed and the delay was not the result of an improper state purpose.

~~The statement of intent to prosecute in Minn._R._Juv._P. 18.01 may be included in the motion for certification if the county which has jurisdiction over the offense is the same county where the motion for certification is filed.~~

Much of the text of Minn._R._Juv._P. ~~18.04~~18.05 subd. 1(A) is taken from Minn._Stat. § ~~260.155~~ (1994)260B.163 (2000).

The sanction for delay in Minn._R._Juv._P. ~~18.04~~18.05, subd. 1(B) and ~~18.06~~18.07, subd. 23 is modeled after Minn._R._Crim._P. 11.10. See In re Welfare of J.J.H., 446 N.W.2d 680, 681-82 (Minn. Ct. App. 1989) (order issued 66 days after hearing, 38 days after submission of written argument; because rule contains no sanction, reversal denied). See also McIntosh v. Davis, 441 N.W.2d 115 (Minn. 1989) (where alternative remedies available, mandamus not appropriate to enforce time limit of Minn._R._Crim._P. 11.10 speedy trial rule).

On continuation questions under Minn._R._Juv._P. ~~18.04~~18.05, subd. 1(B), the victim should have input but does not have the right of a party to appear and object.

Most of the waiver language in Minn._R._Juv._P. ~~18.04~~18.05, subd. 1(C) is taken from the 1983 version of Minn._R._Juv._P. 15.03.

Minn._R._Juv._P. ~~18.04~~18.05, subd. 2(B) requires a determination on appearances of necessary persons. Under Minn._Stat. § ~~260.155~~, subd. ~~4b~~. (1994)260B.163, subd. 7 (2000) the custodial parent or guardian of the child who is the subject of the certification proceedings must accompany the child at each hearing, unless the court excuses the parent or guardian from attendance for good cause shown. The failure of a parent or guardian to comply with this duty may be punished as provided in Minn._Stat. § ~~260.145~~ (1994)260B.154 (2000).

Much of the content of Minn._R._Juv._P. ~~18.04~~18.05, subd. 3 is modeled after Minn._R._Crim._P. 11.03 and 18.06, subd. 1. The court may employ police statements for probable cause

determinations in the same manner as permitted in adult proceedings under Minn. R. Crim. P. 11.03. Also note In re Welfare of E.Y.W., 496 N.W.2d 847, 850 (Minn. Ct. App. 1993) (juvenile not entitled to exclusionary hearing before decision on probable cause).

Minn. R. Juv. P. ~~18.04~~18.05, subd. 3 and ~~18.06~~18.07, subd. ~~4~~2(A)(2) eliminate the need for a probable cause finding when a delinquency accusation is presented by an indictment. Accusation by indictment is uncommon, but might occur more often as the result of grand jury proceedings conducted after 1994 statutory amendments on the question of whether a juvenile is to be accused of first degree murder in adult proceedings. See Minn. Stat. § ~~260.015, subd. 5~~ (1994)260B.007, subd. 6 (2000). Minn. R. Juv. P. ~~18.04~~18.05, subd. 4(B) is consistent with case law. Because the certification question is dispositional in nature, strict application of the rules of evidence is thought to be inappropriate. Minn. R. Juv. P. ~~18.04~~18.05 does not address the consequences of the child's testimony at a hearing. See Simmons v. United States, 390 U.S. 377 (1968) and State v. Christenson, 371 N.W.2d 228 (Minn. Ct. App. 1985). Cf. Harris v. New York, 401 U.S. 222 (1971).

When a child waives probable cause solely for the purpose of certification, that waiver does not preclude the child from litigating probable cause in a subsequent prosecution on the underlying offense.

Following presentation of evidence by the party with the burden of proof under Minn. R. Juv. P. ~~18.04~~18.05, subd. 4(C) or (D), the adverse party may move the court for directed relief on the grounds that the burden of proof has not been met by the evidence presented.

The determination under Minn. R. Juv. P. ~~18.05~~18.06, subd. 1 whether an offense would result in a presumptive commitment to prison under the Minnesota Sentencing Guidelines should be analyzed pursuant to those guidelines. The public safety factors listed in Rule 18.06, subd. 3 mirror those set forth in Minn. Stat. § 260B.125, subd. 4 and eliminate the need for non-offense related evidence of dangerousness. See In re Welfare of D.M.D., 607 N.W.2d 432 (Minn. 2000).

Under Minn. Stat. §§ ~~260.111, subd. 1a., 260.015, subd. 5(b) and 260.125, subd. 7~~ (1994)260B.101, subd. 2, 260B.007, subd. 6(b), and 260B.125, subd. 10 (2000), the accusation of first degree murder by a 16 or 17 year old child takes the case out of the delinquency jurisdiction of the juvenile court. If this accusation is first made by complaint, and is followed by an indictment that does not accuse the child of first degree murder but of some other crime, the proceedings come within the exclusive jurisdiction of the juvenile court, but subject to action of the juvenile court on

any motion for certification of the proceedings to adult court. In these circumstances, the juvenile court would deal with an accusation by indictment in the same fashion as proceedings might otherwise occur on a juvenile court petition. Once adult court proceedings begin on an indictment for first degree murder, regardless of the ultimate conviction, the proceedings remain within adult court jurisdiction. Indictments may be received by any district court judge including one sitting in juvenile court.

Under Minn. R. Crim. P. 17.01, first degree murder cases are prosecuted by an indictment, but the proceedings can begin by complaint. State v. Behl, 564 N.W.2d 560 (Minn. 1997). As a result, the prosecuting attorney can initiate a first degree murder accusation in adult court proceedings.

Minn. R. Juv. P. ~~18.08~~18.02, subd. 2 repeats the procedural requirement stated in Minn. Stat. § ~~260.125, subd. 6 (1994)~~260B.125, subd. 9 (2000).

Rule 18 previously contained a provision that allowed jail credit for time spent in custody in connection with the offense or behavioral incident on which further proceedings are to occur. See Minn. R. Juv. P. 18.06, subd. 1(D) (repealed 2003). That provision was deleted because jail credit is awarded at the time of sentencing in adult court, and is thus governed by the Minnesota Rules of Criminal Procedure, not the Minnesota Rules of Juvenile Procedure. See Minn. R. Crim. P. 27.03, subd. 4(B).

RULE 19. EXTENDED JURISDICTION JUVENILE PROCEEDINGS AND PROSECUTION

RULE 19.01 INITIATION OF EXTENDED JURISDICTION JUVENILE PROCEEDINGS AND PROSECUTION

Subd. 1. Authority. ~~Extended jurisdiction juvenile proceedings are initiated pursuant to Minnesota Statutes § 260.126 and Minnesota Rules of Juvenile Procedure 19. Jurisdiction of the juvenile court may continue until the child's twenty-first (21st) birthday. Extended jurisdiction juvenile prosecutions are initiated pursuant to Minnesota Statutes, sections 260B.125 and 260B.130, Rule 18.06, subdivisions 5(A) and (B), and Rule 19.~~

Subd. 2. Definitions.

(A) "Extended jurisdiction juvenile" is a child who has been given a stayed adult criminal sentence, a disposition under Minnesota Statutes ~~§ 260.185~~, section 260B.198 and for whom jurisdiction of the juvenile court may continue until the child's twenty-first (21st) birthday.

(B) "Extended jurisdiction juvenile proceeding" includes the process to determine whether a child should be prosecuted as an extended jurisdiction juvenile. Extended jurisdiction juvenile proceedings may be initiated pursuant to Rule 19.01, subdivisions 3 and 4.

(C) "Extended jurisdiction juvenile prosecution" includes the trial, disposition, and subsequent proceedings after the determination that a child should be prosecuted as an extended jurisdiction juvenile. Extended jurisdiction juvenile prosecutions may be initiated pursuant to Rule 19.06.

Subd. 3. Designation by Prosecuting Attorney. The court shall commence an extended jurisdiction juvenile proceeding when a delinquency petition filed pursuant to ~~Minnesota Rules of Juvenile Procedure 6~~:

(A) alleges a felony offense committed after the child's sixteenth (16th) birthday and would, if committed by an adult, be a presumptive commitment to prison under the sentencing guidelines and applicable statutes, or a felony offense in which the child allegedly used a firearm; and

(B) the prosecuting attorney designates on the petition that the case should be an extended jurisdiction juvenile prosecution.

This designation may be made at the time the petition is filed, and may be withdrawn by the prosecuting attorney any time before jeopardy attaches.

Subd. 4. Motion by Prosecuting Attorney. The prosecuting attorney may make a written motion pursuant to this Minnesota Rules of Juvenile Procedure 27 to have the court commence an extended jurisdiction juvenile proceeding when a delinquency petition has been filed pursuant to ~~Minnesota Rules of Juvenile Procedure 6~~ alleging a felony offense committed after the child's fourteenth (14th) birthday. The motion may be made at the first appearance on the delinquency petition, or within ten (10) days after the first appearance pursuant to ~~Minnesota Rules of Juvenile Procedure 5 and 7~~ or before jeopardy attaches, whichever of the later two occurs first.

RULE 19.02 NOTICE OF THE EXTENDED JURISDICTION JUVENILE PROCEEDING

A notice of the initial appearance under ~~Minnesota Rules of Juvenile Procedure~~ 19.04, ~~subd. subdivision~~ 2, together with a copy of the petition and designation, or a copy of the motion and petition, shall be served pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 25.

RULE 19.03 EXTENDED JURISDICTION JUVENILE STUDY [no proposed amendments to subdivisions 1 and 3]

Subd. 2. Content of Reports. If study reports include a recommendation on the court's actions, the report shall address each of the public safety considerations of ~~Minn. R. Juv. P. Rule~~ 19.05 that is germane to the case.

Subd. 4. Filing and Access to Reports. The person(s) making a study shall file a written report with the court and provide copies to the prosecuting attorney and the child's counsel four (4) days, excluding Saturdays, Sundays, and legal holidays, prior to the time scheduled for the hearing. The report shall otherwise be confidential.

RULE 19.04 HEARINGS ON EXTENDED JURISDICTION JUVENILE PROCEEDINGS

Subd. 1. In General.

(A) *Limited Public Access.* The court shall exclude the general public from extended jurisdiction juvenile proceedings and shall admit only those persons who, in the discretion of the court, have a direct interest in the case or the work of the court including victims. The court shall open the hearings to the public in extended jurisdiction juvenile proceedings where the child is alleged to have committed an offense or has been proven to have committed an offense that would be a felony if committed by an adult and the child was at least sixteen (16) years of age at the time of the offense, except that the court may exclude the public from portions of a extended jurisdiction juvenile proceedings hearing to consider psychological material or other evidence that would not be accessible to the public in an adult proceeding.

(B) *Timing.* The contested hearing to determine whether the matter will be an extended jurisdiction juvenile proceeding hearing prosecution shall be held within thirty (30) days of:

(1) ~~the filing of the petition designating an extended jurisdiction juvenile prosecution; or~~

~~(2)~~ the filing of the extended jurisdiction juvenile proceeding motion.

Only if good cause is shown by the prosecuting attorney or the child may the court extend the time for ~~at the~~ contested hearing for up to an additional sixty (60) days.

(C) *Waiver*. The child may waive the right to an extended jurisdiction juvenile proceeding hearing provided that the child does so knowingly, voluntarily, and intelligently on the record after being fully and effectively informed of all rights by counsel. In determining whether the child has knowingly, voluntarily, and intelligently waived this right the court shall look at the totality of the circumstances. These circumstances include but are not limited to: the presence of the child's parent(s), legal guardian, legal custodian or guardian ad litem, the child's age, maturity, intelligence, education, experience, and ability to comprehend the proceedings and consequences.

(D) *Discovery*. The child and prosecuting attorney are entitled to discovery pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 10.

Subd. 2. Initial Appearance and Probable Cause Determination.

(A) *Timing*. Unless waived by the child, or based upon an indictment, an initial appearance and court determination on the issue of probable cause shall be completed within fourteen (14) days of the filing of the petition designating an extended jurisdictional juvenile ~~prosecution~~ proceeding or the filing of the extended jurisdictional juvenile proceedings motion. The court may, on the record, extend this time for good cause. ~~If witnesses are to be called, the court may continue the hearing.~~

(B) At the initial appearance hearing, the court shall:

(1) verify the name, age, race, and residence of the child who is the subject of the matter;₂

(2) determine whether all necessary persons are present, and identify those persons for the record;₂

(3) appoint counsel if not previously appointed;₂

(4) determine whether notice requirements have been met and if not whether the affected persons waive notice;₂

(5) schedule further hearings including: a probable cause hearing, unless waived; the contested hearing required by ~~Minnesota Rules of Juvenile Procedure~~ 19.04, ~~subd. 4~~ subdivision 3; and a pre-hearing conference if requested;₂ and

(6) order studies pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 19.03, if appropriate.

(C) *Offense Probable Cause.* A showing of probable cause to believe that the child committed the offense alleged by the delinquency petition shall be made pursuant to Minnesota Rules of Criminal Procedure 11.

(D) *Designation Probable Cause.* If the prosecuting attorney has designated the proceeding an extended jurisdiction juvenile ~~prosecution~~proceeding pursuant to Rule 19.01, subdivision 3 and the court finds that:

(1) probable cause exists for an offense that, if committed by an adult, would be a presumptive commitment to prison under the Sentencing Guidelines and applicable statutes or alleges a felony offense in which the child allegedly used a firearm; and

(2) the child was at least sixteen (16) years old at the time of the offense, the court shall order that the matter proceed as an extended jurisdiction juvenile prosecution pursuant to ~~Minnesota Rules of Juvenile Procedure 19.07~~19.09.

(E) *Waiver.* The child may waive a probable cause hearing and permit a finding of probable cause without a hearing, provided that the child does so knowingly, voluntarily, and intelligently on the record after being fully and effectively informed of the right to a probable cause hearing by counsel.

Subd. 3. Conduct and Procedure for Extended Jurisdiction Juvenile Proceeding Contested Hearing.

(A) *Hearing Rights.* The child's counsel and the prosecuting attorney shall have the right to:

- (1) present evidence;
- (2) present witnesses;
- (3) cross-examine witnesses; and
- (4) present arguments for or against extended jurisdiction juvenile prosecution.

(B) *Evidence.* All evidence considered by the court on the extended juvenile jurisdiction question shall be made a part of the court record. The court may receive any information, except privileged communication, that is relevant to the issue of extended jurisdiction juvenile prosecution, including reliable hearsay and opinions.

(C) *Order of Hearing.*

(1) The prosecuting attorney may make an opening statement, confining the statement to the facts expected to be proved.

(2) The child's counsel may make an opening statement, or may make it immediately before offering evidence. The statement shall be confined to a statement of the defense and the facts expected to be proved.

(3) The prosecuting attorney shall offer evidence in support of extended jurisdiction juvenile prosecution.

(4) The child's counsel may offer evidence on behalf of the child.

(5) The prosecuting attorney may offer evidence in rebuttal of the defense evidence, and the child's counsel may then offer evidence in response to the prosecuting attorney's rebuttal evidence. In the interests of justice the court may permit either party to offer additional evidence.

(6) At the conclusion of the evidence, the prosecuting attorney may make a closing argument.

(7) The child's counsel may make a closing argument.

(D) *Burdens of Proof.* The prosecuting attorney shall prove by clear and convincing evidence that the case meets the criteria for extended jurisdiction juvenile prosecution, pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 19.05.

**~~RULE 19.05 EXTENDED JURISDICTION JUVENILE PROSECUTION~~ PUBLIC SAFETY
DETERMINATION**

~~The court may order a case to proceed as an extended jurisdiction juvenile prosecution if~~
~~the~~ In determining whether public safety would be served, taking the court shall take into account the
following factors:

(A) the seriousness of the alleged offense in terms of community protection, including the existence of any aggravating factors recognized by the Minnesota Sentencing Guidelines, the use of a firearm, ~~or~~ and the impact on the victim;

(B) the culpability of the child in committing the alleged offense, including the level of the child's participation in planning and carrying out the offense and the existence of any mitigating factors recognized by the Minnesota Sentencing Guidelines;

(C) the child's prior record of delinquency;

(D) the child's programming history, including the child's past willingness to participate meaningfully in available programming;

(E) the adequacy of the punishment or programming available in the juvenile justice system;
and

(F) the dispositional options available for the child.

In considering these factors, the court shall give greater weight to the seriousness of the alleged offense and the child's prior record of delinquency than to the other factors listed in this subdivision.

RULE 19.06 EXTENDED JURISDICTION JUVENILE PROSECUTION DETERMINATION

Subd. 1. Extended Jurisdiction Juvenile Prosecution Required. The court shall designate the proceeding an extended jurisdiction juvenile prosecution:

(A) following a motion for certification in a presumptive certification case pursuant to Minnesota Statutes, section 260B.125, subdivision 3:

(1) when the court finds, after a contested hearing pursuant to Rule 18.05, that the child has shown by clear and convincing evidence that retaining the proceeding in juvenile court serves public safety pursuant to Rule 18.06, subdivision 3; or

(2) when the parties agree that extended jurisdiction juvenile prosecution is appropriate; or

(B) following designation by the prosecuting attorney and findings by the court pursuant to Rule 19.04, subdivision 2(D).

Subd. 2. Extended Jurisdiction Juvenile Prosecution Discretionary. The court may designate the proceeding an extended jurisdiction juvenile prosecution:

(A) following a motion for certification in a non-presumptive certification case:

(1) when the court finds, after a contested certification hearing, that the prosecutor has not demonstrated by clear and convincing evidence that retaining the proceeding in juvenile court does not serve public safety pursuant to Rule 18.06, subdivision 3, and the court determines that extended jurisdiction juvenile prosecution is appropriate; or

(2) when the parties agree that extended jurisdiction juvenile prosecution is appropriate and the child waives the right to a contested hearing; or

- (B) following a motion for extended jurisdiction juvenile proceeding:
- (1) when the court finds, after a contested extended jurisdiction juvenile hearing conducted pursuant to Rule 19.04, that designating the proceeding an extended jurisdiction juvenile prosecution serves public safety pursuant to Rule 19.05; or
- (2) when the parties agree that extended jurisdiction juvenile prosecution is appropriate and the child waives the right to a contested hearing.

RULE 19.0619.07 ORDER

Subd. 1. Decision, Timing, and Content of Order Following Waiver of Extended Jurisdiction Juvenile Hearing and Stipulation to Extended Jurisdiction Juvenile Order.

~~Within fifteen (15) days of the hearing the court shall enter an order, with written findings of fact and conclusions of law. If the motion is granted further proceedings shall be held in juvenile court pursuant to the Minnesota Rules of Criminal Procedure, except as modified by these rules. If the motion is denied further proceedings shall be held pursuant to Minnesota Rules of Juvenile Procedure 7.~~When a child waives the right to a contested hearing and stipulates to entry of an order that the child is subject to an extended jurisdiction juvenile prosecution, the court shall, within five (5) days of that hearing, enter a written order stating:

- (A) that extended jurisdiction juvenile prosecution shall occur for the offense(s) alleged in the delinquency petition filed pursuant to Rule 6.03;
- (B) a finding of probable cause in accordance with Rule 19.04, subdivision 2(C), unless the accusation was presented by means of an indictment; and
- (C) findings of fact as to:
- (1) the child's date of birth; and
- (2) the date of the alleged offense(s).

Subd. 2. Decision, Timing, and Content of Order Following Contested Hearing.

Within fifteen (15) days of the contested hearing, the court shall enter an order with written findings of fact and conclusions of law as provided in this subdivision.

- (A) If the court orders that the proceeding be an extended jurisdiction juvenile prosecution, the order shall state:
- (1) that extended jurisdiction juvenile prosecution shall occur for the offense(s) alleged in the delinquency petition filed pursuant to Rule 6.03;

(2) a finding of probable cause in accordance with Rule 19.04, subdivision 2(C), unless the accusation was presented by means of an indictment; and

(3) findings of fact as to:

(a) the child's date of birth;

(b) the date of the alleged offense(s); and

(c) why the court found that designating the proceeding as an extended jurisdiction juvenile prosecution serves public safety pursuant to Rule 19.05.

(B) If the court does not order that the proceeding be an extended jurisdiction juvenile prosecution, the court order shall state:

(1) that the case shall proceed as a delinquency proceeding in juvenile court;

(2) a finding of probable cause in accordance with Rule 19.04, subdivision 2(C), unless the accusation was presented by means of an indictment; and

(3) findings of fact as to:

(a) the child's date of birth;

(b) the date of the alleged offense(s); and

(c) why the court found that retaining the proceeding in juvenile court serves public safety pursuant to Rule 19.05.

If the court orders that the matter proceed as an extended jurisdiction juvenile prosecution, further proceedings shall be held pursuant to the Minnesota Rules of Criminal Procedure, except as modified by these rules. If the court orders that the matter is not an extended jurisdiction juvenile prosecution, further proceedings shall be held pursuant to Rule 7.

Subd. 23. Delay. For good cause, the court may extend the time period to file its order for an additional fifteen (15) days. If the order is not filed within fifteen (15) days, or within the extended period ordered by the court pursuant to this subdivision, the child, except in extraordinary circumstances, shall be released from custody subject to such nonmonetary release conditions as may be required by the court under ~~Minnesota Rules of Juvenile Procedure~~ 5.

Subd. 34. Venue Transfer. When the court deems it appropriate, taking into account the best interest of the child or of society, or the convenient administration of the proceedings, the court may transfer venue ~~over~~of the case to the juvenile court of the county of the child's residence. With the consent of the receiving court, the court may also transfer the case to the juvenile court of the county where the child is found or the county where the alleged offense occurred. The transfer shall

be processed in the manner provided by Minn. Stat. ~~§ 260.121~~, section 260B.105. The receiving court thereafter has venue for purposes of all proceedings under ~~Minn.R.Juv.P. 19.08~~ Rules 19.10 (disposition and sentencing upon conviction in extended jurisdiction juvenile proceedings) and ~~19.09~~19.11 (revocation of stay of adult criminal sentence).

Subd. 45. Final Order. ~~This order shall constitute~~ Any order issued pursuant to this rule is a final order.

RULE 19.08 WITHDRAWAL OF WAIVER OF EXTENDED JURISDICTION JUVENILE HEARING

Subd. 1. General Procedure. A child may bring a motion to withdraw the waiver of extended jurisdiction juvenile hearing and stipulation to extended jurisdiction juvenile prosecution order:

(A) within fifteen (15) days of the filing of the order, upon showing that it is fair and just to do so; or

(B) at any time prior to trial, upon showing that withdrawal is necessary to correct a manifest injustice.

The motion shall be made in the juvenile court that entered the extended jurisdiction juvenile prosecution order.

Subd. 2. Basis for Motion. The motion shall state with particularity one of the following bases for granting withdrawal of the waiver:

(A) the waiver was not knowingly, voluntarily, or intelligently made;

(B) the child alleges ineffective assistance of counsel; or

(C) withdrawal is appropriate in the interests of justice.

Subd. 3. Timing and Effect of Hearing. A hearing shall be held within fifteen (15) days of the filing of the motion. Following the hearing, if the court grants the motion to withdraw the waiver of extended jurisdiction juvenile hearing, the court shall vacate the order for extended jurisdiction juvenile prosecution, and proceedings will resume pursuant to Rule 19.04. If the court denies the motion to withdraw the waiver for extended jurisdiction juvenile hearing, the order for extended jurisdiction juvenile prosecution shall remain in effect, and proceedings will resume pursuant to Rule 19.09.

RULE ~~19.07~~19.09 EXTENDED JURISDICTION JUVENILE PROSECUTION

Every child who is the subject of an extended jurisdiction juvenile prosecution is entitled to trial by jury on the underlying offense pursuant to Minnesota Rules of Criminal Procedure 26. The court shall schedule a hearing for the child to enter a plea to the charges. If the child pleads not guilty, the court shall schedule an omnibus hearing prior to the trial and shall also schedule the trial. The trial shall be scheduled pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 13.02, except:

(A) The time shall run from the date of the filing of the extended jurisdiction juvenile order.

(B) In cases where the child is in detention, if the extended jurisdiction juvenile hearing is commenced within thirty (30) days of the prosecution motion for EJJ designation, the trial shall be scheduled within sixty (60) days of the court's order designating the child an extended jurisdiction juvenile; ~~or if, unless good cause is shown why the trial should not be held within that time.~~ If the hearing on the motion to designate the child as an extended jurisdiction juvenile is commenced more than thirty (30) days from the filing of the motion, the trial, for a child in detention, shall be commenced within thirty (30) days of entry of the court's order designating the child an extended jurisdiction juvenile.

RULE ~~19.08~~19.10 DISPOSITION

Subd. 1. Guilty Plea or Conviction. Guilty pleas shall be made on the record and pursuant to ~~Minnesota Rules of Criminal Procedure~~ 15. Upon a guilty plea or conviction, the court shall:

(A) order one or more dispositions under Minnesota Statutes ~~§ 260.185,~~ section 260B.198; and

(B) impose an adult criminal sentence under Minnesota Law, except that the court shall stay execution of that sentence on the conditions that the child not violate the provisions of the disposition ordered in ~~subd. subdivision~~ 1(A) above or commit a new offense.

Subd. 2. Length of Stayed Sentence. Unless the stayed sentence is executed after a revocation hearing pursuant to ~~Minnesota Rules of Juvenile Procedure 19.09~~19.11, jurisdiction of the juvenile court shall terminate on the child's twenty-first (21st) birthday or at the end of the

maximum probationary term, whichever occurs first. The court may terminate jurisdiction earlier pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 15.08.

Subd. 3. Limitation on Certain Extended Jurisdiction Juvenile Dispositions. If an extended jurisdiction juvenile prosecution, initiated by designation by the prosecuting attorney, results in a guilty plea or a conviction for an offense other than a presumptive commitment to prison under the Minnesota Sentencing Guidelines or a felony committed using a firearm, the court shall only impose one or more dispositions under Minnesota Statutes ~~§ 260.185,~~ section 260B.198. But if the child has plead guilty and consents, even if the plea or the conviction is for an offense other than a presumptive commitment under the guidelines, the court may also impose a stayed adult criminal sentence under ~~Minnesota Rules of Juvenile Procedure 19.08, subd. 19.10,~~ subdivision 1.

Subd. 4. Venue. If the child's county of residence is not the same county where the offense occurred, venue of the case may be transferred as provided by Minnesota Statutes ~~§ 260.121,~~ section 260B.105. The conditions under which the execution of any adult sentence are stayed shall be determined by the juvenile court having jurisdiction to impose and supervise any juvenile court disposition. The stayed adult sentence may be pronounced by the judge who presided over the trial or who accepted a plea of guilty. If venue for the juvenile disposition is being transferred to the child's county of residence, prior to making the transfer, the transferring court shall prepare and file with the receiving court, a copy of the juvenile's file, including any plea and sentencing transcript.

Subd. 5. Record of Proceedings. Upon a plea of guilty after a child has been determined to be an Extended Jurisdiction Juvenile, any verbatim record made of the plea and sentencing proceedings shall be transcribed and filed with the court administrator within thirty (30) days after the date of sentencing. Where venue is transferred as provided in ~~Subd. subdivision~~ 4, the transcript shall be immediately prepared and filed with the transferring court.

~~RULE 19.09~~ 19.11 REVOCATION

Subd. 1. Commencement of Proceedings.

(A) *Issuance of Revocation Warrant or Summons.* Proceedings for the revocation of a stayed sentence shall be commenced by the issuance of a warrant or a summons by the court. The warrant or summons shall be based upon a written report showing probable cause to believe that the probationer has violated any of the provisions of the disposition order or committed a

new offense. The written report shall include a description of the surrounding facts and circumstances upon which the request for revocation is based. The court may issue a summons instead of a warrant whenever it is satisfied that a warrant is unnecessary to secure the appearance of the probationer. The court may issue a warrant for immediate custody of the childprobationer if the court finds that there is probable cause to believe that:

(A) the childprobationer has violated the terms of probation or a court order; and

(B)(1) the childprobationer failed to appear after having been personally served with a summons or subpoena, or reasonable efforts to personally serve the childprobationer have failed, or there is a substantial likelihood that the childprobationer will fail to respond to a summons; or

(C)(2) the childprobationer or others are in danger of imminent harm; or

(D)(3) the childprobationer has left the custody of the detaining authority without permission of the court.

(B) *Contents of Warrant and Summons.* Both the warrant and summons shall contain the name of the probationer, a description of the stayed sentence sought to be revoked, the signature of the issuing judge or judicial officer of the district court, and shall be accompanied by the written report upon which it is based. The amount of any bail or other conditions of release may be set by the issuing judge or judicial officer and endorsed on the warrant. The warrant shall direct that the probationer be brought promptly before the court. The warrant shall direct that the probationer be brought before a judge or judicial officer without unnecessary delay, and in any event not later than thirty-six (36) hours after arrest exclusive of the day of arrest. The summons shall summon the probationer to appear at a stated time and place to respond to the revocations charges.

(C) *Place of Detention.* If the probationer is under eighteen (18) years of age and is to be detained prior to the revocation hearing, the probationer may only be detained in a juvenile facility. If the probationer is eighteen (18) years of age or older and is to be detained, the probationer may be detained in an adult facility.

(D) *Execution or Service of Warrant or Summons; Certification.* Execution, service, and certification of the warrant or summons shall be as provided in Minnesota Rules of Criminal Procedure 3.03.

Subd. 2. First Appearance.

(A) *Advice to Probationer.* A probationer who initially appears before the court pursuant to a warrant or summons concerning an alleged probation violation, shall be advised of the nature of the violation charged. The probationer shall also be given a copy of the written report upon which the warrant or summons was based if the probationer has not previously received such report. The judge, judicial officer, or other duly authorized personnel shall further advise the probationer substantially as follows:

(1) the probationer is entitled to counsel at all stages of the proceedings, and if financially unable to afford counsel, one will be appointed for the probationer and, if counsel is waived, standby counsel will be appointed;

(2) unless waived, a revocation hearing will be held to determine whether there is clear and convincing evidence that the probationer violated any provisions of the disposition order or committed a new offense and that the stayed sentence should therefore be revoked;

(3) before the revocation hearing, all evidence to be used against the probationer shall be disclosed to the probationer and the probationer shall be provided access to all official records pertinent to the proceedings;

(4) at the hearing, both the prosecuting attorney and the probationer shall have the right to offer evidence, present arguments, subpoena witnesses, and call and cross-examine witnesses, provided, however, the probationer may be denied confrontation by the court when good cause is shown that a substantial risk of serious harm to others would exist if it were allowed. Additionally, the probationer shall have the right at the revocation hearing to present mitigating circumstances or other reasons why the violation, if proved, should not result in revocation; and

(5) the probationer has the right of appeal from the determination of the court following the revocation hearing.

(B) *Appointment of Counsel.* If the probationer is financially unable to afford counsel, one will be appointed for the probationer and, if counsel is waived, standby counsel ~~will~~shall be appointed.

(C) *Conditions of Release.* The probationer may be released pending appearance at the revocation hearing. In deciding whether and upon what conditions to release the probationer, the court shall take into account the conditions of release and the factors determining the conditions of release as provided by ~~Minnesota Rules of Juvenile Procedure~~ 5 and Minnesota Rules of Criminal

Procedure 6.02, ~~subs.~~subdivisions 1 and 2. The probationer has the burden of establishing that he or she will not flee or will not be a danger to any other person or the community.

(D) *Time of Revocation Hearing.* The court shall set a date for the revocation hearing to be held within a reasonable time. If the probationer is in custody as a result of the revocation proceedings, the revocation hearing shall be held within seven (7) days. If the probationer has allegedly committed a new offense the court may postpone the revocation hearing pending disposition of the new offense whether or not the probationer is in custody.

(E) *Record.* A verbatim record shall be made of the proceedings at the probationer's initial appearance.

Subd. 3. Revocation Hearing.

(A) *Hearing Procedures.* The hearing shall be held in accordance with the provisions of ~~Minnesota Rules of Juvenile Procedure 19.09, subd. 19.11, subdivisions~~ 2(A)(1), (2), (3), and (4).

(B) *Finding of No Violation of Terms and Conditions of Disposition.* If the court finds that a violation of the terms and conditions of the disposition order was not established by clear and convincing evidence, the revocation proceedings shall be dismissed, and the probationer's stayed sentence shall be continued under conditions ordered by the court.

(C) *Finding of Violation of Terms and Conditions of Disposition.*

(1) If the court finds upon clear and convincing evidence that any provisions of the disposition order were violated, or if the probationer admits the violation, the court may order any of the adult sanctions authorized by Minnesota Statutes ~~§~~, section 609.14, ~~subd.~~subdivision 3.

(2) If the court finds upon clear and convincing evidence that any provisions of the disposition order were violated, or if the probationer admits the violation, and the extended jurisdiction juvenile conviction was for an offense with a presumptive prison sentence or the probationer used a firearm, the court shall order the execution of the sentence or make written findings indicating the mitigating factors that justify continuing the stay.

(D) *Record of Findings.* A verbatim record shall be made of the proceedings at the revocation hearing and in any contested hearing the court shall make written findings of fact on all disputed issues including a summary of the evidence relied upon and a statement of the court's reasons for its determination.

(E) *Appeal*. The probationer or the prosecuting attorney may appeal from the court's decision according to the procedure provided for appeal from a sentence by the Minnesota Rules of Criminal Procedure 28.05.

(F) Any verbatim record of Extended Jurisdiction Juvenile probation revocation hearings shall be transcribed and filed with the court administrator within thirty (30) days of the date of sentencing.

Comment--Rule 19

The determination of "presumptive prison" under the Minnesota Sentencing Guidelines should be analyzed pursuant to those guidelines.

The sanction for delay in Minn._R._Juv._P. 19.04, subd. 1(B) and 19.06, subd. 23 is modeled after Minn._R._Crim._P. 11.10. See In re Welfare of J.J.H., 446 N.W.2d 680, 681-82 (Minn. Ct. App. 1989) (order issued 66 days after hearing, 38 days after submission of written argument; because rule contains no sanction, reversal denied). See also McIntosh v. Davis, 441 N.W.2d 115 (Minn. 1989) (where alternative remedies available mandamus not appropriate to enforce time limit of Minn._R._Crim._P. 11.10 speedy trial rule).

Most of the waiver language in Minn._R._Juv._P. 19.04 subd. 1(C) is taken from the 1983 version of Minn._R._Juv._P. 15.03.

Minn._R._Juv._P. 19.04 does not address the consequences of the child's testimony at a hearing or whether it can be subsequently used against the child. See Simmons v. United States, 390 U.S. 377 (1968); ~~or by way of impeachment~~ 2nd State v. Christenson, 371 N.W.2d 228 (Minn. Ct. App. 1985); (impeachment); cf. Harris v. New York, 401 U.S. 222 (1971).

On continuation questions under Minn._R._Juv._P. 19.04, subd. 1(B), the victim should have input but does not have the right of a party to appear and object.

Previously, the last sentence to Rule 19.04, subd. 2(A) stated, "If witnesses are to be called, the court may continue the hearing." This statement was deleted because the committee felt it was redundant in light of the previous sentence, which allows the court to extend the time of the hearing for good cause.

Much of the content of Minn._R._Juv._P. 19.04, subd. 3 is modeled after Minn._R._Crim._P. 11.03 and 18.06, subd. 1. The court may employ police statements for probable cause determinations in the same manner as permitted in adult proceedings under Minn._R._Crim._P.

11.03. Also note, In re Welfare of E.Y.W., 496 N.W.2d 847, 850 (Minn. Ct. App. 1993) (juvenile not entitled to exclusionary hearing before decision on probable cause).

Minn._R._Juv._P. 19.04, subd. 3 eliminates the need for a probable cause finding when a delinquency accusation is presented by an indictment. Accusation by indictment is uncommon, but might occur more often as a result of grand jury proceedings conducted after 1994 statutory amendments on the question of whether a child is to be accused of first degree murder in adult proceedings. See Minn._Stat. § 260.015, subd. 5 (1994)260B.007, subd. 6 (2000).

When a juvenile waives probable cause solely for the purpose of extended jurisdiction juvenile proceeding, that waiver does not preclude the child from litigating probable cause in a subsequent prosecution on the underlying offense.

Minn._R._Crim._P. 19.04, subd. 4(B) is consistent with case law. Because the extended jurisdiction juvenile prosecution question is dispositional in nature, strict application of the rules of evidence is thought to be inappropriate.

Rule 19.09(B) was amended to clarify that a continuance beyond the timelines prescribed by the Rule may be necessary in limited circumstances. For example, a reasonable delay may be appropriate to facilitate necessary scientific testing. The Committee adopted a “good cause” standard for use in determining whether to grant a continuance. “Good cause” is defined in case law; however, the Committee intends a strict application of the standard. Time is of the essence in an extended jurisdiction juvenile prosecution. Juvenile dispositional options and treatment opportunities may be lost if the trial is unnecessarily delayed. The court should consider the unique nature of extended jurisdiction juvenile when deciding whether to grant a continuance for good cause.

Following the presentation of evidence by the prosecuting attorney the child may move the court for directed relief on the grounds that the burden of proof has not been met.

Under Minn._Stat. § ~~260.155, subd. 4b (1994)~~260B.163, subd. 7 (2000) the custodial parent or guardian of the child alleged or found to be delinquent or prosecuted as an extended jurisdiction juvenile, must accompany the child at each hearing held during the delinquency or extended juvenile jurisdiction proceedings, unless the court excuses the parent or guardian from attendance for good cause shown. The failure of a parent or guardian to comply with this duty may be punished as provided in Minn._Stat. § ~~260.145 (1994)~~260B.154 (2000).

Pursuant to Minn._Stat. § ~~260.215 (1994)~~260B.245 (2000), if a child is convicted as an extended jurisdiction juvenile, the child will be assigned points for the purpose of computing a criminal history score pursuant to the Minnesota Sentencing Guidelines, as if the child were an adult.

A disposition form developed by the Minnesota Sentencing Guidelines Commission shall be completed by the court in addition to the findings of facts, conclusions of law and order.

A sentencing worksheet developed by the Minnesota Sentencing Guidelines Commission shall be completed by the probation department pursuant to Minn._R._Crim._P. 27, and Minn._Stat. §§ 609.115 and 631.20 (~~1994~~2000). The court shall send a copy of this worksheet to the Minnesota Sentencing Guidelines Commission pursuant to Minn._R._Crim._P. 27.03, subd. 4(c).

RULE 20. CHILD INCOMPETENT TO PROCEED AND DEFENSE OF MENTAL ILLNESS OR MENTAL DEFICIENCY

RULE 20.01 PROCEEDING WHEN CHILD IS BELIEVED TO BE INCOMPETENT

Subd. 1. ~~Competency~~Incompetency to Proceed Defined. A child is incompetent and shall not be permitted to enter a plea, be tried, or receive a disposition for any offense when the child lacks sufficient ability to:

~~(A) A child shall not be permitted to waive counsel if the child lacks sufficient ability to:~~

~~(1) knowingly, voluntarily, and intelligently waive the constitutional right to counsel;~~

~~(2) appreciate the consequences of the decision to proceed without representation by counsel; or~~

~~(3) comprehend the nature of the charge and proceedings, the range of applicable punishments, and any additional matters essential to a general understanding of the case.~~

~~—— (B) A child shall not be permitted to enter a plea or be tried or sentenced for any offense if the child lacks sufficient ability to:~~

~~(1)~~(A) consult with a reasonable degree of rational understanding with ~~defense~~ the child's counsel; or

~~(2)~~(B) understand the proceedings or participate in the defense due to mental illness or mental deficiency.

Subd. 2. Counsel. ~~The court may not proceed under this rule before the child consults with counsel and the child's counsel has an opportunity to be heard by the court.~~ Any child subject to competency proceedings shall be represented by counsel.

Subd. 23. Proceedings. The prosecuting attorney, the child's counsel or the court shall bring a motion to determine the competency of the child if there is reason to doubt the competency of the child during the pending proceedings.

The motion shall set forth the facts constituting the basis for the motion but the child's counsel shall not divulge communications in violation of the attorney-client privilege. The bringing of the motion by the child's counsel does not waive the attorney-client privilege. Any such motion may be brought over the objection of the child. Upon such motion, the court shall suspend the proceedings and shall proceed as follows:

(A) *Felony or Gross Misdemeanor.* If the offense is a felony or gross misdemeanor, the court shall determine whether there is sufficient probable cause to believe the child committed the offense charged before proceeding pursuant to this rule. If there is sufficient showing of probable cause, the court shall proceed according to this rule. If the court finds insufficient probable cause to believe the child committed the offense charged, the charging document against the child shall be dismissed.

(B) *Other Matters.* If the offense is a ~~gross misdemeanor~~, misdemeanor, juvenile petty matter or juvenile traffic offense, the court having trial jurisdiction shall proceed according to this rule, or dismiss the case in the interests of justice.

(C) *Medical Examination.* If there is probable cause, the court shall proceed as follows. The Court shall suspend the proceedings and appoint at least one examiner as defined in the Minnesota Commitment Act, Minnesota Statutes, ~~Ch.~~chapter 253B to examine the child and report to the court on the child's mental condition.

The court may not order confinement for the examination if the child is otherwise entitled to release and if the examination can be done adequately on an outpatient basis. The court may require the completion of an outpatient examination as a condition of release.

The court may order confinement for an inpatient examination for a specified period not to exceed sixty (60) days if the examination cannot be adequately done on an outpatient basis or if the child is not entitled to be released.

The court shall permit examination of the child or observation of such examination by a qualified psychiatrist, clinical psychologist or qualified physician retained and requested by the child's counsel or prosecuting attorney.

The court shall further direct the mental-health professionals to notify promptly the prosecuting attorney, the child's counsel, and the court if such mental-health professionals conclude, upon examination, that the child presents an imminent risk of serious danger to another person, is imminently suicidal, or otherwise needs emergency intervention.

(D) *Report of Examination.* Within ~~at least~~ sixty (60) days, the examiner shall send a written report to the judge who ordered such examination, the prosecuting attorney and the child's counsel. The report contents shall not be otherwise disclosed until the hearing on the child's competency. The report shall include:

(1) A diagnosis of the mental condition of the child;

(2) If the child is mentally ill or mentally deficient, an opinion as to:

(a) whether the child can understand the proceedings and participate in the defense;

(b) whether the child presents an imminent risk of serious danger to another person, is imminently suicidal, or otherwise needs emergency intervention;

(c) whether the child requires any treatment to attain competency and if so, the appropriate treatment alternatives by order of choice, the extent to which the child can be treated as an outpatient and the reasons for rejecting such treatment if institutionalization is recommended; and

(d) whether, with treatment, there is a substantial probability that the child will attain competency and if so, when the child is expected to attain competency and the availability of inpatient and outpatient treatment agencies or facilities in the local geographical area;

(3) A statement of the factual basis upon which the diagnosis and opinion are based;

and

(4) If the examination could not be conducted because the child is unwilling to participate, a statement to that effect with an opinion, if possible, as to whether the child's unwillingness was the result of mental illness or deficiency.

Subd. 34. Hearing and Determination of Competency.

(A) *Hearing and Notice.* Upon receipt of the report and notice to the parties, the court shall hold a hearing within ten (10) days on the issue of the child's competency to proceed.

(B) *Going Forward with Evidence.* If the ~~defense~~child's counsel moved for the examination, the ~~defense~~child's counsel shall go forward first with evidence at the hearing. If the prosecuting attorney or the court on its own initiative, moved for the examination, the prosecuting attorney shall go forward with evidence unless the court otherwise directs.

(C) *Report and Evidence.* The examination report and other evidence as to the child's mental condition may be admitted at the hearing. The person who prepared the report or any individual designated by that person as a source of information for preparation of the report, other than the child or the child's counsel, is considered the court's witness and may be called and cross-examined as such by either party.

(D) *Child's Counsel as Witness.* The child's counsel may testify as to personal observations of and conversations with the child to the extent that attorney-client privilege is not violated, and continue to represent the child. The prosecuting attorney may examine the child's counsel testifying to such matter.

The court may inquire of ~~defense~~the child's counsel concerning the attorney-client relationship and the child's ability to communicate effectively with the child's counsel. However, the court may not require ~~defense~~the child's counsel to divulge communications in violation of the attorney-client privilege. The prosecuting attorney may not cross-examine the child's counsel responding to the court's inquiry.

(E) *Decision and Sufficiency of Evidence.* If the court determines that the child is competent by the greater weight of evidence, the court shall enter an order finding competency. Otherwise, the court shall enter an order finding incompetency.

Subd. 45. Effect of Finding on Issue of Competency to Proceed.

(A) *Finding of Competency.* If the court determines that the child is competent to proceed, the proceedings against the child shall resume.

(B) *Finding of Incompetency.* If the offense is a ~~gross misdemeanor~~, misdemeanor, petty matter, or juvenile traffic offense, and the court determines that the child is incompetent to proceed, the matter shall be dismissed. If the offense is a gross misdemeanor, and the court determines that the child is incompetent to proceed, the court has the discretion to dismiss or

suspend the proceedings against the child except as provided by Rule 20.01, subdivision 7. If the offense is a felony, and the court determines that the child is incompetent to proceed, the proceedings against the child shall be further suspended except as provided by ~~Minnesota Rules of Juvenile Procedure~~ 20.01, ~~subd. 6~~ subdivision 7.

(1) If the court determines that the child is mentally ill or deficient so as to be incapable of understanding the proceedings or participation in the defense, the court shall order any existing civil commitment continued. If the child is not under commitment, the court may direct civil commitment proceedings be initiated, and the child confined in accordance with the provisions of the Minnesota Commitment Act, Chapter 253B.

(2) If it is determined that commitment proceedings are inappropriate and a petition has been filed alleging the child is in need of protection ~~and/or~~ services (CHIPS), the court shall order such jurisdiction be continued. If the child is not under CHIPS jurisdiction, the court may order the child held for up to seventy-two (72) hours and direct CHIPS proceedings to be initiated.

(3) ~~If it~~ if it is determined that neither commitment proceedings nor CHIPS proceedings are appropriate, the child shall be released to the child's parent(s), legal guardian or legal custodian under conditions deemed appropriate to the court.

Subd. 56. Continuing Supervision by the Court in Felony Cases. ~~The.~~ In felony and gross misdemeanor cases in which proceedings have been suspended, the person charged with the child's supervision, such as the head of the institution to which the child is committed, shall report to the trial court on the child's mental condition and competency to proceed at least every six (6) months unless otherwise ordered. Copies of the reports shall also be sent to the prosecuting attorney and to the child's counsel.

Unless the petition against the child has been dismissed as provided by ~~Minnesota Rules of Juvenile Procedure~~ 20.01, ~~subd. 6~~ subdivision 7, the trial court, child's counsel and the prosecuting attorney shall be notified of any proposed institutional transfer, partial institutionalization status, and any proposed termination, discharge, or provisional discharge of the juvenile protection case. The prosecuting attorney shall have the right to participate as a party in any proceedings concerning such proposed changes in the child's commitment or status.

Subd. 67. Dismissal of Proceedings.

(A) Delinquency and extended jurisdiction juvenile proceedings shall be dismissed upon the earlier of the following:

(1) the child's nineteenth (19) birthday in the case of a delinquency, or twenty first (21) birthday if a designation or motion for extended jurisdiction juvenile proceedings is pending;

(2) for all cases except murder, the expiration of one (1) year from the date of the finding of the child's incompetency to proceed unless the prosecuting attorney, before the expiration of the one (1) year period, files a written notice of intention to prosecute the child when the child has been restored to competency. Such a notice shall extend the suspension of proceeding for one (1) year from the date of filing subject to ~~Minnesota Rules of Juvenile Procedure 20.01, subd. 6(A)~~ subdivision 7(A).

(B) For all cases pending certification except murder, proceedings shall be dismissed upon the expiration of three (3) years from the date of the finding of the child's incompetency unless the prosecuting attorney, before the expiration of the three (3) year period, files a written notice of intention to prosecute the child when the child has been restored to competency. Murder charges shall not be dismissed based upon a finding of incompetency.

Subd. 78. Determination of Legal Issues Not Requiring Child's Participation. The fact that the child is incompetent to proceed shall not preclude the child's counsel from making any legal objection or defense that can be fairly determined without the personal participation of such child.

Subd. 89. Admissibility of Child's Statements. When a child is examined under this rule, any statement made by the child for the purpose of the examination and any evidence derived from the examination shall be admissible in evidence only at the proceedings to determine whether the child is competent to proceed.

RULE 20.02 DEFENSE OF MENTAL ILLNESS OR MENTAL DEFICIENCY AT THE TIME OF THE OFFENSE [no proposed amendments to subdivisions 4, 6, and 8]

Subd. 1. When Raised.

(A) If the child intends to raise mental illness or mental deficiency as a defense, the child's counsel shall advise the court and prosecuting attorney in writing at the omnibus hearing or no less than ten (10) days before the trial, whichever is earlier. The notice shall provide the court and prosecuting attorney with a statement of particulars showing the nature of the mental illness or

mental deficiency expected to be proved and the names and addresses of witnesses expected to prove it.

(B) The court, upon good cause shown and in its discretion, may waive these requirements and permit the introduction of the defense, or may continue the hearing for the purpose of an examination in accordance with the procedures in this rule.

(C) A continuance granted for an examination will toll the speedy trial rule and the limitation on detention pending adjudication and disposition.

Subd. 2. Examination of the Child. If the defense of mental illness or mental deficiency is raised, the court shall order an examination as described in ~~Minnesota Rules of Juvenile Procedure~~ 20.01, ~~subd 2(C)~~subdivision 3(C). The court may order that the examination for competency under ~~Minnesota Rules of Juvenile Procedure~~ 20.01 and the ~~Minnesota Rules of Juvenile Procedure~~ 20.02 ~~examination~~ be conducted simultaneously.

Subd. 3. Refusal of the Child to be Examined. If the child does not participate in the examination so that the examiner is unable to make an adequate report to the court, the court may:

(A) prohibit the child from introducing evidence of the child's mental illness or mental deficiency, ~~may~~;

(B) strike any such evidence previously introduced, ~~may~~;

(C) permit any other party to comment on and to introduce evidence of the child's refusal to cooperate to the trier of the facts; and

(D) ~~may~~ make any such other ruling as it deems just.

Subd. 5. Report of Examination. At the conclusion of the examination, a written report of the examination shall be forwarded to the judge who ordered the examination, the prosecuting attorney and to the child's counsel. The contents of the report shall not otherwise be disclosed except as ordered by the court. The report of the examination shall contain:

(A) A diagnosis of the child's mental illness or mental deficiency as requested by the court;

(B) If so directed by the court, an opinion as to whether, because of mental illness or deficiency, the child at the time of the commission of the offense charged was laboring under such a defect of reason as not to know the nature of the act constituting the offense with which child is charged or that it was wrong;

(C) Any opinion requested by the court that is based on the examiner's diagnosis;

(D) A statement of the factual basis upon which the diagnosis and any opinion are based; and

(E) If the examination cannot be conducted by reason of the child's unwillingness to participate, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the child was the result of mental illness or deficiency.

Subd. 7. Trial. When a child is examined under ~~Minnesota Rules of Juvenile Procedure 20.01 or Minnesota Rules of Juvenile Procedure 20.02, or both,~~ the admissibility at trial of any statements made by the child for the purposes of the examination and any evidence obtained as a result of such statements shall be determined by the following rules:

(A) *Notice by Child of Sole Defense of Mental Illness or Mental Deficiency.* If a child notifies the court and prosecuting attorney under ~~Minnesota Rules of Juvenile Procedure 20.02, subd. subdivision~~ 1 of an intention to rely solely on the defense of mental illness or deficiency, any statements made by the child for the purpose of the mental examination and evidence obtained as a result of the statements shall be admissible at the trial upon that issue.

(B) *Separate Trial of Defenses.* If a child notifies the court and prosecuting attorney under ~~Minnesota Rules of Juvenile Procedure 20.02, subd. subdivision~~ 1 of an intention to rely on the defense of mental illness or deficiency together with a defense of not guilty, there shall be a separation of the two defenses with a sequential order of proof before the court in a continuous trial in which the defense of not guilty shall be heard and determined first, and then the defense of the child's mental illness or deficiency.

(C) *Effect of Separate Trial.* If the child relies on the two defenses, the statements made by the child for the purpose of the mental examination and any evidence obtained as a result of such statements shall be admissible against the child only at that stage of the trial relating to the defense of mental illness or mental deficiency.

(D) *Procedure Upon Separated Trial of Defenses.*

(1) Court Trial for Child Alleged to be Delinquent or Charged with a Juvenile Petty or Juvenile Traffic Offense. Upon the trial of the defense of not guilty the court shall determine whether the elements of the offense charged have been proved beyond a reasonable doubt. If the court determines that the elements of the offense have not been proved beyond a reasonable doubt, the court shall enter findings and order a dismissal pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 13.09. If the court determines that the elements of the offense have been proved beyond

a reasonable doubt and the child is relying on the sole defense of mental illness or mental deficiency, the defense of mental illness or mental deficiency shall then be tried and determined by the court. The child shall have the burden of proving the defense of mental illness or mental deficiency by a preponderance of the evidence. Based upon that determination the court shall make a finding of:

- (a) not guilty by reason of mental illness; or
- (b) not guilty by reason of mental deficiency; or
- (c) guilty.

The court shall enter findings pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 13.09.

(2) Extended Jurisdiction Juvenile Proceedings. A court trial in an extended jurisdiction juvenile proceeding shall be conducted pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 20.02, ~~subd. subdivision~~ 7(D)(1). A jury trial in an ~~Extended Jurisdiction Juvenile~~ extended jurisdiction juvenile proceeding shall be conducted pursuant to Minnesota Rules of Criminal Procedure 20.02, ~~subd. subdivision~~ 6(4).

Comment -- Rule 20

Minn. R. Juv. P. 20 is based upon Minn. R. Crim. P. 20.

Under Minn. R. Juv. P. 20.01, subd. ~~2(C)~~3(C), the court shall permit examination of the child or observation of such examination by a qualified medical personnel retained and requested by the child's counsel or prosecuting attorney. The court has the authority to order payment of reasonable and necessary costs of evaluation of the child at public expense pursuant to Minn. Stat. § ~~260.251, subd. 1(3)~~ (1994) 260B.331, subd. 1(a)(3) (2000). Furthermore, under Minn. Stat. § 260.042 (2000), the court shall make an orientation and educational program available for juveniles and their families in accordance with the program established, if any, by the Minnesota Supreme Court.

“A determination of competency, even in the context of juvenile adjudicatory proceedings, is a fundamental right. Because of this and because dispositions in juvenile proceedings, including rehabilitative dispositions, may involve both punishment and a substantial loss of liberty, the level of competence required to permit a child's participation in juvenile court proceedings can be no less than the competence demanded for trial or sentencing of an adult.” In re Welfare of D.D.N., 582

N.W.2d 278, 281 (Minn. Ct. App. 1998) (citation omitted). The court has a continuing obligation to inquire into a juvenile's competency to stand trial when substantial information exists, or the child's observed demeanor raises doubts as to competency. In re Welfare of S.W.T., 277 N.W.2d 507, 512 (Minn. 1979) citing Drope v. Missouri, 420 U.S. 162, 179 (1975); Pate v. Robinson, 383 U.S. 375, 385 (1966); State v. Jensen, 153 N.W.2d 339 (Minn. 1967).

A juvenile delinquency proceeding is not a criminal proceeding. See Minn. Stat. § 260B.225 (2000) (stating a violation of a state or local law or ordinance by a child before becoming 18 is not a crime). Although the right to counsel has been recognized for juveniles in In re Gault, 387 U.S. 1 (1967), the corollary right to self-representation has not been established in the juvenile context. The committee recognized that children subject to competency proceedings may be vulnerable; therefore, it would not be appropriate to allow a child to waive counsel prior to a court determining that the child is competent.

RULE 21. APPEALS

RULE 21.01 GENERALLY

This rule governs the procedure for appeals from juvenile traffic and juvenile petty, delinquency, extended jurisdiction juvenile, and certification proceedings in district court. Except as provided by these rules, Minnesota Rules of Civil Appellate Procedure shall govern appeals from juvenile court proceedings. These rules do not limit a child's right to seek extraordinary writs. In order to expedite its decision or for other good cause shown, the court of appeals may suspend any of these rules, except the time for filing a notice of appeal. The court of appeals shall expedite all appeals from juvenile court proceedings.

A party may petition to the Supreme Court of Minnesota for review pursuant to Minnesota Rules of Civil Appellate Procedure 117 or 118.

RULE 21.02 PROCEEDINGS IN FORMA PAUPERIS [no proposed amendments]

RULE 21.03 APPEAL BY CHILD

Subd. 1. Right of Appeal. A child may appeal as of right from an adverse final order and certain non-final orders, as enumerated in ~~Minnesota Rules of Juvenile Procedure~~ 21.03, ~~subd.subdivisions~~ 1(A) and (B). In addition, a child shall be permitted to seek a discretionary

appeal as provided for in Minnesota Rules of Criminal Procedure 28.02, ~~subd.~~subdivision 3. A motion for a new trial is not necessary in order to appeal.

The court shall notify a child of the right to appeal in any case where it issues a final order. A child may combine an appeal from a sentence or a disposition with an appeal from a judgment of conviction or an order for adjudication. The court shall not determine whether an offense will be adjudicated or continued without adjudication until the time of disposition.

Appeals from disposition or sentence shall only include matters which arose after adjudication or conviction. The court may review any other matter as the interests of justice require. In addition to all powers of review presently existing, the court may review the sentence or disposition to determine whether it is consistent with the standards set forth in ~~Minnesota Rules of Juvenile Procedure~~ 15.05, ~~subds.~~subdivisions 2 and 3.

(A) *Final Orders*. Final orders include orders for:

(1) certification to adult court, whether the order is entered or stayed pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 21.03, ~~subd.~~subdivision 3;

(2) continuance without adjudication and disposition in delinquency proceedings pursuant to Minnesota Statutes ~~§ 260.185, subd.~~, section 260B.198, subdivisions 1(a) or (b);

(3) adjudication and disposition in delinquency proceedings pursuant to Minnesota Statutes ~~§ 260.185, subd.~~, section 260B.198, subdivision 1;

(4) adjudication and disposition in juvenile petty or juvenile traffic offender proceedings;

(5) denial of motion for new trial or rehearing;

(6) determination as an extended jurisdiction juvenile prosecution;

(7) conviction and sentencing of an extended jurisdiction juvenile;

(8) an order, on the prosecuting attorney's motion, finding the child incompetent, if the underlying offense would be a felony or a gross misdemeanor if the offense were committed by an adult;

(9) an order modifying a disposition; and

(10) an order revoking probation including an order adjudicating a child delinquent after the child was granted a continuance without adjudication and an order revoking the stay of the adult sentence of an extended jurisdiction juvenile.

(B) *Non-Final Orders*. A child may appeal from the following non-final orders:

- (1) an order refusing or imposing conditions of release; and
- (2) an order granting a new trial when a child's motion for acquittal is denied, if the underlying offense would be a felony or a gross misdemeanor if the offense were committed by an adult;

Subd. 2. Procedure for Appeals.

(A) *Time for Taking an Appeal.* An appeal shall be taken within thirty (30) days ~~after~~of the filing of the appealable order ~~appealed from~~.

(B) *Notice of Appeal and Filing.* The appellant shall file the following documents with the clerk of the appellate courts:

- (1) a notice of appeal naming the party taking the appeal, identifying the order being appealed, and listing the names, addresses, and telephone numbers of all counsel;

- (2) proof of service of notice of appeal on the adverse party, the district court administrator, and the court reporter;

- (3) a certified copy of the judgment or order appealed from; and

- (4) two copies of the statement of the case as provided for by Minnesota Rules of Civil Appellate Procedure 133.03.

When the disposition is ordered in a county other than the one in which the child pled guilty or was found to have committed the offense(s), the appellant shall serve notice of appeal on the prosecuting attorney, district court administrator and court reporter in the county where the child pled guilty or was found to have committed the offense(s) as well as the prosecuting attorney, district court administrator and court reporter where the disposition was ordered. Proof of service of notice of appeal on all of these persons shall be filed with the clerk of the appellate courts.

Whether a filing fee is required shall be determined pursuant to Minnesota Rules of Civil Appellate Procedure 103.01 ~~subd.~~ subdivision 3. A cost bond is not required.

Except for the timely filing of the notice of appeal, if a party fails to comply with these rules, the validity of the appeal may not be affected except as deemed appropriate by the court of appeals.

(C) *Transcript of Proceedings and Transmission of the Transcript and Record.* The Minnesota Rules of Civil Appellate Procedure shall govern the transcription of the proceedings and the transmission of the transcript and record to the court of appeals except as modified here:

(1) Within ten (10) days of filing the notice of appeal, appellant shall order the necessary transcript and notify the court reporter that the transcript is due within thirty (30) days of the court reporter's receipt of the appellant's request for transcript.

(2) For parties represented by the state public defender, payment for transcripts will be made after receipt of the transcripts.

(3) Any videotape or audiotape exhibits admitted at trial or hearing shall be transcribed at the request of either party and shall be included as part of the record.

(D) *Briefs.* The Minnesota Rules of Civil Appellate Procedure shall govern the form and filing of briefs except as modified here:

(1) The appellant shall serve and file the appellant's brief and appendix within forty-five (45) days after delivery of the transcript by the reporter. If the transcript is obtained prior to appeal or if the record on appeal does not include a transcript, then the appellant shall serve and file the appellant's brief and appendix within forty-five (45) days after the filing of the notice of appeal.

(2) The appellant's brief shall contain a statement of the procedural history.

(3) The respondent shall serve and file the respondent's brief and appendix, if any, within thirty (30) days after service of the brief of appellant.

(4) The appellant may serve and file a reply brief within fifteen (15) days after service of the respondent's brief.

Subd. 3. Stay Pending Appeal.

(A) *Generally.* Pending an appeal, a stay may be granted by the trial court or the court of appeals. A motion for stay initially shall be presented to the trial court.

In cases certified to adult court, the district court shall stay further adult criminal proceedings, and may stay certification orders pending the filing of a final decision on appeal. By agreement of the parties, the adult case may proceed through the omnibus hearing.

If a stay is granted, conditions of release must be set pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 21.03, subd. subdivision 4(B).

(B) Placement Pending Appeal.

(1) Upon Certification. If the district court determines that a certified child should be detained, placement pending appeal shall be governed by Minnesota Rules of Criminal Procedure 6.02, and detention in an adult facility shall be presumed.

(2) Other Cases. If the child is detained, the reasons for the place of detention must be stated on the record, and the detention must comply with Minnesota Statutes ~~§ 260.174~~, section 260B.176.

Subd. 4. Release of Child.

(A) *Motion for Release Pending Appeal.* When release is not addressed in the motion for a stay, application for release pending appeal shall be made to the trial court. If the trial court refuses to release a child pending appeal, or imposes conditions of release, the court shall state the reasons on the record. Thereafter, if an appeal is pending, a motion for release or for modification of the conditions of release pending review, may be made to the court of appeals. The motion shall be determined upon such papers, affidavits, and portions of the record as the parties shall present. The court of appeals may order the release of a child with or without conditions, pending disposition of the motion. The motion shall be determined on an expedited basis.

(B) *Conditions of Release.* Minnesota Rules of Criminal Procedure 6.02 shall govern conditions of release upon certification. If a stay is granted under ~~Minnesota Rules of Juvenile Procedure 21.03, subd. subdivision~~ 3 of this rule, Minnesota Statutes ~~§ 260.174~~, section 260B.176 shall govern conditions of release. The child has the burden of proving that the appeal is not frivolous or taken for delay and that the child does not pose a risk for flight, is not likely to commit a serious crime, and is not likely to tamper with witnesses. The court shall make written findings on each of the above factors. The court shall take into consideration that:

(1) the child may be compelled to serve the sentence or disposition imposed before the appellate court has an opportunity to decide the case; and

(2) the child may be confined for a longer time pending the appeal than would be possible under the potential sentence or disposition for the offense charged.

(C) *Credit for Time Spent in Custody.* The time a child is in custody pending an appeal may be considered by the court in determining the disposition imposed in juvenile proceedings. ~~In certification and extended jurisdiction juvenile cases where a child is detained in secure custody, the court shall give credit for time served when it executes an adult sentence.~~

RULE 21.04 APPEAL BY PROSECUTING ATTORNEY [no proposed amendments to subdivisions 2, 4, and 6]

Subd. 1. Scope of Appeal. The prosecuting attorney may appeal as of right from:

(1)(A) sentences or dispositions imposed or stayed in extended jurisdiction juvenile cases;
(2)(B) denial of a motion for certification or denial of a determination of extended jurisdiction juvenile; ~~and~~ or

(3)(C) pretrial orders, including suppression orders.

(D) orders dismissing the petition for lack of probable cause when the dismissal was based solely on a question of law.

~~Orders dismissing a petition for lack of probable cause or dismissing a complaint pursuant to Minnesota Statutes § 631.21, are not appealable.~~

Appeals from disposition or sentence shall only include matters which arose after adjudication or conviction. In addition to all powers of review presently existing, the court may review the sentence or disposition to determine whether it is consistent with the standards set forth in ~~Minnesota Rules of Juvenile Procedure~~ 15.05, ~~subs.~~subdivisions 2 and 3.

Subd. 3. Procedure for Appeals. Prosecutorial appeals from final orders shall be governed by ~~Minnesota Rules of Juvenile Procedure~~ 21.03, ~~subd.~~subdivision 2. All other prosecutorial appeals shall proceed as follows:

(A) *Time for Appeal.* The prosecuting attorney may not appeal until all issues raised during the certification hearing or the evidentiary hearing and pretrial conference have been determined by the trial court. The appeal shall be taken within five (5) days after notice of entry of the appealable order ~~appealed from~~ is served upon the prosecuting attorney by the district court administrator. An appeal by the prosecuting attorney under this rule bars any further appeal by the prosecuting attorney from any existing orders not included in the appeal. No appeal of a pretrial order by the prosecuting attorney shall be taken after jeopardy has attached. An appeal under this rule does not deprive the trial court of jurisdiction over pending matters not included in the appeal.

(B) *Notice of Appeal and Filing.* ~~Minnesota Rules of Juvenile Procedure~~ 21.03, ~~subd.~~subdivision 2(B) shall govern notice of appeal and filing of an appeal by the prosecuting attorney except that the prosecuting attorney must file a statement of the case as provided for by Minnesota Rules of Civil Appellate Procedure 133.03. In addition, if a transcript of the proceedings is necessary, the prosecuting attorney must file a copy of the request for transcript with the clerk of the appellate court.

(C) *Briefs.* The Minnesota Rules of Civil Appellate Procedure shall govern the form and filing of briefs except as modified here:

(1) Within fifteen (15) days of delivery of the transcripts, appellant shall file the appellant's brief with the clerk of the appellate courts together with proof of service upon the respondent.

(2) The appellant's brief shall contain a statement of the procedural history.

(3) Within eight (8) days of service of appellant's brief upon respondent, the respondent shall file the respondent's brief with the appellate court clerk together with proof of service upon the appellant.

Subd. 5. Conditions of Release. Upon appeal by the prosecuting attorney of a pretrial order, the conditions for the child's release pending the appeal shall be governed by ~~Minnesota Rules of Juvenile Procedure~~ 5 or Minnesota Rules of Criminal Procedure 6.02, ~~subs. subdivisions~~ 1, and 2, for children certified to adult court. The court shall consider whether the child may be confined for a longer time pending the appeal than would be possible under the potential sentence or disposition for the offense charged.

RULE 21.05 APPEAL BY PARENT(S), LEGAL GUARDIAN OR LEGAL CUSTODIAN OF THE CHILD

~~If the~~A parent(s), legal guardian, or legal custodian who participated separately pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 2.04, ~~subd. subdivision~~ 3, ~~they~~ may appeal from a disposition, ~~sentence or order for certification by the juvenile court.~~

~~Parents~~A parent, legal guardian, or legal custodian who ~~are~~is indigent may ~~make application~~apply to the office of the state public defender for legal representation.

Parents' right to appeal is limited to cases where they have a liberty or property interest involved and their interest is adverse to that of the child.

The procedure for appeals by ~~the~~a parent(s), legal guardian, or legal custodian shall be governed by ~~Minnesota Rules of Juvenile Procedure~~ 21.03, ~~subd. subdivision~~ 2.

RULE 21.06 CERTIFIED QUESTIONS TO THE COURT OF APPEALS [no proposed amendments]

Comment--Rule 21

An appeal may be taken by petitioning the Supreme Court of Minnesota for review pursuant to Minn.R.Civ.App.P. 117 or by petitioning for accelerated review pursuant to Minn.R.Civ.App.P. 118.

The scope of review shall be pursuant to Minn.R.Civ.App.P. 103.04.

Minn.R.Juv.P. 21.03, subd. 1(A) (7) and (10) includes the right to appeal a stayed sentence and the execution of a stayed sentence. See Minn.R.Crim.P. 27.04, subd. 3(5) and 28.05, subd. (2). An order continuing the matter without adjudication and imposing a disposition pursuant to Minn.Stat. § ~~260.185, subd. 260B.198, subds. 1(a) or (b)~~(1994)2000) is an appealable final order as is a subsequent order adjudicating the child and imposing a disposition pursuant to Minn.Stat. § ~~260.185, subd. 1~~(1994)260B.198, subd. 1 (2000).

A child's representation by the public defender is governed by ~~Minn.Stat.Ch.~~Minnesota Statutes, chapter 611. The public defender is not required to appeal from misdemeanor dispositions or adjudications, but may do so at its discretion.

The parents or the child may be required to contribute to some or all of the costs of representation. See Minn.R.Juv.P. 3.06, subd. 2. See also Minn.Stat. § ~~260.251, subd. 4~~(1994)260B.331, subd. 5 (2000).

Minn.R.Juv.P. 21.03, subd. 2(C)(1) refers to "necessary transcripts" because in some cases only a partial transcript will be required. Minn.R.Civ.App.P. 110.02 shall govern partial transcripts.

~~In the new legislation providing representation for juveniles on appeal and expedited appeals, funding for this mandate was not provided. Until further resources are available, it is recommended that the court of appeals be lenient in granting extensions for timing of briefs if requested. When added staff can be hired, the rules should be modified to shorten time frames to allow for more expedited appeals of juvenile cases.~~

Whether or not the order for certification should be stayed is discretionary with the court. Certification orders are governed by Minn.R.Juv.P. ~~18.06~~18.07. If a stay is granted, the child will be detained in a juvenile facility if detention is necessary. If the stay of the certification order is not granted and detention is necessary, the child will more likely be detained in an adult facility pending the appeal.

Minn. R. Juv. P. 21.04, subd. 1(D), which allows prosecutors to appeal orders dismissing a petition for lack of probable cause when dismissed solely on a question of law, is based on *In re Welfare of C.P.W.*, 601 N.W.2d 204, 207 (Minn. Ct. App. 1999).

RULE 22. SUBSTITUTION OF JUDGE

RULE 22.01 BEFORE OR DURING TRIAL [no proposed amendments]

RULE 22.02 AFTER VERDICT OR FINDING OF GUILT [no proposed amendments]

RULE 22.03 NOTICE TO REMOVE [no proposed amendments to subdivision 2]

Subd. 1. Service and Filing. The child's counsel or the prosecuting attorney may serve on the other parties and file with the court administrator a notice to remove the judge assigned to a trial or hearing. The notice shall be served and filed within seven (7) days after the party receives written notice, or oral notice in court on the record, of which judge is to preside at the trial or hearing but, in any event, not earlier than seven (7) days after the initial hearing and assignment of counsel for the child and not later than the commencement of the trial or the hearing.

RULE 22.04 ASSIGNMENT OF NEW JUDGE [no proposed amendments]

Comment--Rule 22

This rule is modeled after Minn. R. Crim. P. 26.03, subd. 13. The rule permits the child's counsel or prosecuting attorney to serve and file a notice to remove a judge as a matter of right without cause. Only one such removal as a matter of right is permitted to a party. Other removals must be for cause.

The right to a fair trial before an impartial tribunal is a fundamental due process requirement. See, e.g., *Estes v. Texas*, 381 U.S. 532, 85 S.Ct. 1628, 14 L.Ed.2d. 543 (1965). The Supreme Court in *In re Murchison*, 349 U.S.133, 75 S.Ct. 623 (1955), explained the importance of an impartial tribunal: "Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness...[T]o perform its high function in the best way, justice must satisfy the appearance of justice." 349 U.S. at 136 citing *Offutt v. United States*, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954). Moreover, the fact

finder must make a determination based only on the evidence in the record in order to ensure effective appellate review. See, e.g., Patterson v. Colorado, 205 U.S. 454 (1907).

The appearance, if not the actuality, of neutral and unbiased fact-finding may be compromised if the judge has actual knowledge of the social history or prior court history of the child. See, e.g., In re Gladys R., 1 Cal.3d 855, 464 P.2d 127, 83 Cal. Rptr. 671 (1970) (reversible error for juvenile court to review social study report before jurisdictional hearing). The problem is especially acute in delinquency proceedings because juveniles, with the exception of extended jurisdiction juveniles, do not have the right to a jury trial. McKeiver v. Pennsylvania, 403 U.S. 528, 91 S.Ct. 1976, 29 L.Ed. 647 (1971). Whenever a judge knows information that is not admissible at trial but is prejudicial to a child, the impartiality of the tribunal is open to question. A.B.A. Juvenile Justice Standards Relating to Adjudication, Standard 4.1 at 54. The problem of impartiality is particularly troublesome in juvenile court proceedings because the same judge typically handles the same case at different stages. For example, at a detention hearing, a judge may be exposed to a youth's social history file and prior record of police contacts and delinquency adjudications, all of which bear on the issue of appropriate pretrial placement. When the same judge is subsequently called upon to determine the admissibility of evidence in a suppression hearing and the guilt of the juvenile in the same proceeding, the juvenile's basic right to a fair trial by an impartial tribunal with a determination of guilt based on admissible evidence may be compromised. E.g., In re Welfare of J.P.L., 359 N.W.2d 622 (Minn. Ct. App. 1984).

RULE 23. REFEREE

RULE 23.01 AUTHORIZATION TO HEAR CASES [no proposed amendments]

RULE 23.02 OBJECTION TO ASSIGNMENT OF REFEREE [no proposed amendments]

RULE 23.03 NOTICE TO REMOVE A PARTICULAR REFEREE

The child's counsel or the prosecuting attorney may serve on the other party and file with the court administrator a notice to remove a particular referee assigned to a trial or hearing in the same manner as a judge may be removed under ~~Minnesota Rules of Juvenile Procedure~~ 22. After a party has once disqualified a referee as a matter of right, that party may disqualify the substitute judge or referee only upon an affirmative showing of cause.

RULE 23.04 TRANSMITTAL OF FINDINGS [no proposed amendments]

RULE 23.05 REVIEW [no proposed amendments to subdivisions 1, 4 and 5]

Subd. 2. Filing. A motion for a review by a judge must be filed with the court within ten (10) days after the referee's findings and recommendations have been provided to the child, child's counsel, prosecuting attorney, child's parents, legal guardian or legal custodian and their counsel pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 28.

Subd. 3. Right of Review Upon Filing of Timely Motion.

(A) *Right of Child.* The child is entitled to a review by a judge in any matter upon which a referee has made findings or recommendations.

(B) *Right of Prosecuting Attorney.* The prosecuting attorney is entitled to a review by a judge from any pre-trial findings or recommendations of a referee ~~except those dismissing a petition for lack of probable cause.~~ The prosecuting attorney is not entitled to a review on any pretrial findings by a judge after jeopardy has attached.

(C) *Right of Parent(s), Legal Guardian or Legal Custodian.* The child's parent(s), legal guardian or legal custodian are entitled to a review by a judge of a referee's findings or recommendations made after the allegations of a charging document have been proved.

RULE 23.06 ORDER OF THE COURT

The findings and recommendations of the referee become the order of the court when confirmed by the judge subject to review pursuant to ~~Minnesota Rules of Juvenile Procedure~~ 23.05.

RULE 24. GUARDIAN AD LITEM

RULE 24.01 APPOINTMENT

(A) The court shall appoint a guardian ad litem, except as provided in ~~Minnesota Rules of Juvenile Procedure~~ 24.01 (B) to act in place of a parent, legal guardian or legal custodian to protect the best interests of the child when it appears, at any stage of the proceedings, that the child is without a parent, legal guardian or legal custodian. If the parent, legal guardian or legal custodian is unavailable, incompetent, indifferent to, hostile to, or has interests in conflict with the child's best interests, a guardian ad litem shall be appointed.

(B) The court may determine not to appoint a guardian ad litem when:

- (1) counsel has been appointed or is otherwise retained for the child, and
- (2) the court finds that the best interests of the child are otherwise protected.

~~A determination not to appoint a guardian ad litem must be based on a finding made on the record or in writing which states the reasons for the decision.~~

(C) The court may appoint a guardian ad litem on its own motion or on the motion of the child's counsel or the prosecuting attorney when the court determines that an appointment is in the best interests of the child.

RULE 24.02 GUARDIAN AD LITEM NOT COUNSEL FOR CHILD [no proposed amendments]

RULE 25. NOTICE

RULE 25.01 SUMMONS, NOTICE IN LIEU OF SUMMONS, ORAL NOTICE ON THE RECORD, SERVICE BY ~~FAX~~FACSIMILE TRANSMISSION AND NOTICE BY TELEPHONE [no proposed amendments to subdivisions 1 and 3]

Subd. 2. Notice in Lieu of Summons. A notice in lieu of summons is a document mailed by the court administrator to a person who is directed to appear in court at a specified time and place. If a person appears pursuant to the mailed notice, the person waives the right to personal service of the summons. If the person fails to appear, the court shall not issue a warrant until personal service is made or attempted unless grounds exist under Rule 4.03.

Subd. 4. Detention Hearings: Service by ~~FAX~~Facsimile Transmission or Notice by Telephone Permitted.

(A) *Service By ~~FAX~~Facsimile Transmission.*

(1) Notice to Defense Counsel; Defense Counsel Access to Child and Reports. If a child is detained pending a detention hearing in a place of detention other than home detention or at home on electronic home monitoring, the court administrator shall give the Office of the Public Defender or the child's attorney, if privately retained, notice that the child is in custody, and notice of the detention hearing. ~~and~~ The court administrator shall also provide to the Office of the Public Defender or the child's attorney copies of the reports filed with the court by the detaining officer and the supervisor of the place of detention. Defense counsel shall have immediate and continuing

access to the child. The notice in lieu of summons and copies of the reports may be provided by ~~FAX~~facsimile transmission or hand delivery if mailed notice would not be effective given the time remaining before the detention hearing.

(2) Notice to Prosecuting Attorney. If mailed notice in lieu of summons would not be effective given the time remaining before the detention hearing, notice in lieu of summons may be provided by ~~FAX~~facsimile transmission or hand delivery.

(B) *Notice By Telephone.* If the child, child's attorney, prosecuting attorney, child's parent(s), legal guardian(s) or legal custodian(s) or spouse of the child ~~have~~has not ~~gotten~~received notice of the time and place of the detention hearing and effective service by mail or ~~FAX~~facsimile transmission or hand delivery of the notice in lieu of summons is not possible, the court administrator may provide notice of the time and place of the detention hearing by telephone call.

RULE 25.02 CONTENT [no proposed amendments]

RULE 25.03 PROCEDURE FOR NOTIFICATION [no proposed amendments to subdivisions 1, 2, and 3]

Subd. 4. Timing. ~~A notice in lieu of summons shall be mailed at least five (5) days before the hearing.~~ A summons shall be personally served at least five (5) days before the hearing. A notice in lieu of summons shall be mailed at least eight (8) days before the hearing. These times may be waived by a person or by the court for good cause shown.

Subd. 5. Proof of Service.

(A) *Personal Service.* On or before the date set for appearance, the person who served a summons by personal service shall file a written statement with the court showing:

- (1) that the summons was served, ~~and~~;
- (2) the person on whom the summons was served; ~~and~~;
- (3) the date, time, and place of service.

(B) *Service by Mail.* On or before the date set for appearance, the person who served notice in lieu of summons by mail shall file a written statement with the court showing:

- (1) the name of the person to whom the summons or notice was mailed;
- (2) the date the summons or notice was mailed; and
- (3) whether the summons or notice was sent by certified mail.

(C) *Notice of Detention Hearing: Service by ~~FAX~~Facsimile Transmission.* The person providing notice of a detention hearing by ~~FAX~~facsimile transmission shall file a written statement with the court showing:

(1) the name, address and ~~FAX~~facsimile number of the person to whom the notice was ~~faxed~~sent by facsimile transmission;

(2) the time and date the ~~FAX~~facsimile transmission was sent or the efforts to do so; and

(3) the reason why notice was not sent by First Class Mail.

(D) *Notice of Detention Hearing: Telephone Call.* The person providing notice of a detention hearing by telephone call shall file a written statement with the court showing:

(1) the name, address and telephone number of the person who was contacted with notice of the detention hearing;

(2) the date and time of the telephone call or the efforts to do so; and

(3) the reason why notice in lieu of summons was not sent by First Class Mail and, in the case of the child's attorney or the prosecuting attorney, why the notice in lieu of summons was not ~~faxed~~sent by facsimile transmission.

RULE 25.04 WAIVER [no proposed amendments]

Comment--Rule 25

Pursuant to Minn._Stat. § 260.141, subd. 2 1 (1994), notices of juvenile court proceedings were to be made by personal service or if made pursuant to Minn._R._Civ._P. 4.02, by mail with an acknowledgement returned to the court. That was not the practice throughout the state. This rule is written to reflect the common practice of simply mailing the notice (called a notice in lieu of summons) and petition by first class mail. If those served do not appear in response to the notice, the court can proceed with personal service of a summons and follow up with a warrant if there is still a failure to appear. Appearance rates are generally high with just a mailed notice and the costs of process are significantly increased by mailed service with acknowledgement or by personal service. The legislature has since amended Minn._Stat. § 260.141, subd. 2 1 to comport with this rule. 1996 Minn. Laws Ch. 408, Art, 6, Secs. 3 and 12; see Minn. Stat. § 260B.152, subd. 1 (2000).

This rule allows for notice of a detention hearing to be provided by ~~FAX~~facsimile transmission or telephone call when, given the time remaining before the detention hearing, mailed notice in lieu of summons would not be effective. Notice by ~~FAX~~facsimile transmission or telephone is not permitted for any other type of hearing.

~~This rule is not meant to prohibit~~Historically, there have been some informal service methods for service of the prosecuting attorney and the public defender by each other and by the court, which ~~have been historically efficient and cost effective~~were instituted for efficiency and cost-effectiveness. ~~An example of this would be where the court administrator serves notice in lieu of summons on the prosecuting attorney by walking upstairs to the County Attorney's Office and placing the notice in lieu of summons in a pre-designated in box.~~However, where the rules require a specific method of service, these informal methods of service may not be used. See City of Albert Lea v. Harrer, 381 N.W.2d 499 (Minn. Ct. App. 1986) (stating “[t]he clerk and the city attorney cannot agree to ignore the rules”).

In the appendix of these rules are samples of a notice in lieu of summons and a summons.

RULE 26. SUBPOENAS

[no proposed amendments]

RULE 27. MOTIONS

[no proposed amendments]

RULE 28. COPIES OF ORDERS

Court orders shall be stated on the record at the hearing or a copy of the written order shall be mailed to the child, the child's counsel, prosecuting attorney, probation officer, the parent(s), the legal guardian or legal custodian of the child and their counsel. Copies of court orders shall be sent by the court to those listed above who request such a copy in writing or on the record and to such other persons as the court may direct.

RULE 29. RECORDING

RULE 29.01 PROCEDURE [no proposed amendments]

RULE 29.02 AVAILABILITY OF TRANSCRIPTS [no proposed amendments to subdivision 1]

Subd. 2. Counsel for Parent(s), Legal Guardian or Legal Custodian.

Transcripts of hearings for use at dispositional hearings, for appeal from disposition hearings, or for other use as the court approves, shall be made available to counsel for the parent(s), legal guardian or legal custodian of the child when they participate pursuant to ~~Minnesota Rules of Juvenile Procedure 2.03, subd. 2.04, subdivision~~ 3. Applications for transcripts shall be made to the court in writing or on the record.

RULE 29.03 EXPENSE [no proposed amendments]

RULE 30. RECORDS

[no proposed amendments]

Comment--Rule 30

Legal records as defined in Minn._Stat. § ~~260.161~~260B.171, subd. 1 (~~1994~~Supp. 2000) are the petition, summons, notice, findings, orders, decrees, judgments and motions and such other matters as the court deems necessary and proper. Minn._Stat. § ~~260.161, subd. 2~~ (~~1994~~260B.171, subd. 4 (2000)), provides exceptions to public access of "legal records," arising under Minn._Stat. § ~~260.155~~ 260B.163, subd. 1 (~~1994~~2000), delinquency proceedings alleging or proving a felony level violation by a juvenile at least 16 years old at the time of violation, along with the following exclusions: (1) Minn._Stat. § 245A.04, subd. 3 (Supp. 19952001), which directs the court to provide juvenile court records to the Commissioner of Human Services; and (2) Minn._Stat. §§ 611A.03 (Supp. 2001), and Minn. Stat. §§ 611A.04, 611A.06 and 629.73 (~~1994~~2000), which provide for the rights of victims in delinquency proceedings, juvenile traffic proceedings involving driving under the influence of alcohol or drugs and proceedings involving any other act committed by a juvenile that would be a crime as defined in Minn._Stat. § 609.02 (~~1994~~Supp. 2001), if committed by an adult.

The juvenile court shall maintain records pertaining to juvenile delinquency adjudications until the juvenile reaches 28 years of age. Records pertaining to convictions of extended

jurisdiction juveniles shall be maintained for as long as they would be maintained if the offender had been an adult.

Pursuant to Minn. Stat. § ~~260.161, subd. 1a (1994)~~260B.171, subd. 2 (2000), the juvenile court shall forward data for juvenile delinquents adjudicated delinquent for ~~felony-level criminal sexual conduct~~felony- or gross misdemeanor-level offenses. The court shall also forward data to the BCA on persons convicted as extended jurisdiction juveniles.

If a juvenile is enrolled in school, the juvenile's probation officer shall transmit a copy of the court's disposition order if the juvenile is adjudicated delinquent for committing an act on school property or if the juvenile is adjudicated delinquent for one of the offenses enumerated in Minn. Stat. § ~~260.161, subd. 1b (1994)~~260B.171, subd. 3(a) (2000). When the probation officer transmits a disposition order ~~is transmitted~~ to a school, the probation officer shall notify the parent, legal guardian or legal custodian ~~shall be notified~~ that this information has been sent to the juvenile's school.

"Prosecuting attorney" as used in this rule also includes adult court prosecuting attorneys.

RULE 31. TIMING

RULE 31.01 COMPUTATION

Unless otherwise provided by statute or specific Minnesota Rules of Juvenile Procedure, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or legal holiday. When a period of time prescribed or allowed is three days or less, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. As used in these rules, "legal holiday" includes New ~~Years's~~Year's Day, Martin Luther King's Birthday, Washington's Birthday (~~President's~~Presidents' Day), Memorial Day, Independence Day, Labor Day, Columbus Day, ~~Veteran's~~Veterans Day, Thanksgiving Day, the day after Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or Congress of the United States or by the State.

RULE 31.02 ADDITIONAL TIME AFTER SERVICE BY MAIL [no proposed amendments]

JUVENILE DELINQUENCY FORMS

Form

1. Petition
2. Notice of the Rights of Victims in Juvenile Court
3. Notice in Lieu of Summons
4. Summons
5. Prosecutor's Request for Disclosure
6. Prosecutor's Notice of Evidence and Identification Procedures
7. Petition to Proceed Pro Se in Juvenile Delinquency Proceeding
8. Statement of Rights: Juvenile Delinquency Proceedings
9. Statement of Rights: Juvenile Petty Offender Proceedings
10. Statement of Rights: Juvenile Traffic Offender Proceedings
11. Statement of Rights: Juvenile Probation Revocation
12. Waiver of Right to Contested Hearing in Extended Jurisdiction Juvenile Case
13. Waiver of Right to Contested Hearing in Non-Presumptive Certification Case
14. Waiver of Right to Contested Hearing in Presumptive Certification Case
15. Petition to Enter Plea of Guilty in Extended Jurisdiction Juvenile Case
16. Petition to Enter Plea of Guilty in Juvenile Delinquency Matter

Introductory Statement

The following forms are provided as an aid to practitioners and the court in the juvenile justice system. The forms are not mandatory, but shall be accepted by the court if offered by any party or counsel for their designated purpose. The Advisory Committee on Juvenile Delinquency Rules strongly recommends that Forms 12 through 16 be used in all felony level or enhanceable cases. Additionally, the Committee encourages use of the Petition in every case, but recognizes that the form is likely to undergo further change with the implementation of the Minnesota Case Information System (MNCIS).

Form 1. Petition

State of Minnesota District Court County of _____ Juvenile Court

COUNT	LIST OFFENSE	MOC	F/GM/MP*

* Indicates Felony/Gross Misdemeanor/ Misdemeanor/ Petty

MASTER FILE NO. _____	CA FILE NO. _____
CONTROL NO. _____	DATE INITIAL APPEARANCE _____
CONTROLLING AGENCY _____	PROBATION <input type="checkbox"/> ACTIVE <input type="checkbox"/> NON-ACTIVE
PETITION NO. _____	

FINGERPRINTING COMPLETED	<input type="checkbox"/> YES <input type="checkbox"/> NO
PHOTOGRAPHING COMPLETED	<input type="checkbox"/> YES <input type="checkbox"/> NO

<input type="checkbox"/>	AMENDED
<input type="checkbox"/>	COUNTY ATTORNEY DESIGNATED EJJ
<input type="checkbox"/>	MOTION FOR EJJ FILED
<input type="checkbox"/>	MOTION FOR CERTIFICATION FILED

<input type="checkbox"/>	FELONY	<input type="checkbox"/>	DELINQUENCY
<input type="checkbox"/>	GROSS MISDM	<input type="checkbox"/>	TRAFFIC
<input type="checkbox"/>	MISDEMEANOR		
<input type="checkbox"/>	PETTY OFFENSE		

PETITION

In the Matter of the Welfare of:

NAME: first, middle, last and child's address if different from parent

DATE OF BIRTH

The child's parents, guardian, spouse or nearest relative, noting their relationship and address are as follows:

NAME: first, middle, last

Petitioner states to the Court that there is probable cause to believe that the child has committed the following described offense(s), based upon the following probable cause statement or the attached reported and exhibits:

State of Minnesota District Court County of _____ Juvenile Court

COUNT	LIST OFFENSE	MOC	F/GM/M/P

I endorse this Petition as to form and verify that the contents are true to the best of my information and belief and that reasonable grounds exist to support the Petition.

 Assistant _____ County Attorney Date

Subscribed and sworn to before me on _____

 Notary Public

Form 2. Notice of the Rights of Victims in Juvenile Court

NOTICE OF THE RIGHTS OF VICTIMS IN JUVENILE COURT

1. Right to Participation

Minnesota law (Minn. Stat. § 260B.163, subd.1 (2000) and § 611A.01, et seq. (2000)) prohibits the public from attending juvenile hearings in most cases. However, a person who has a direct interest in the case, such as a crime victim, has the following rights to participate:

- a. The right to have input in a pretrial diversion program decision;
- b. The right to object to the proposed disposition and a plea agreement;
- c. The right to request the prosecutor make a demand for a speedy trial;
- d. The right to be present in court at the time of the disposition hearing (sentencing); and
- e. The right to submit an impact statement to the judge orally or in writing, at the time of disposition (sentencing) hearing.

2. Right to Notification

You have a right to be notified of certain information such as the following:

- a. The contents of any plea agreement;
- b. The schedule changes in court proceedings if you have been subpoenaed or requested to testify;
- c. The information regarding the detention hearing of an arrested or detained juvenile;
- d. The final disposition of the case;
- e. The transfer of the juvenile to a less secure correctional facility;
- f. The release of the juvenile from a custodial institution; and
- g. The escape and apprehension of the juvenile from a custodial institution.

3. Right to Protection

As a victim and/or witness, you have certain rights to protection such as the following:

- a. The right to a safe and secure waiting area during the court process, if available;
- b. The right to ask a law enforcement agency to withhold public access to data revealing your identity;
- c. The right not to give your home or business address in open court; and
- d. The right not to be retaliated against by employers if you are called to testify as a victim or witness.

4. Right to Financial Assistance

You may be eligible for financial assistance from the state through the Crime Victims' Reparations Board if you have suffered economic loss as a result of a violent crime. Also, you may ask the court to order the juvenile to pay restitution under Minn. Stat. §611A.04. If the juvenile fails to pay restitution as ordered, you have the right to ask the juvenile's probation officer to request a probation review hearing.

5. Additional Rights

In cases involving sex offenses, you have the right to be notified whether the offender has any sexually transmitted diseases, and may also have the right to ask that the offender submit to HIV-testing.

TERMS USED IN JUVENILE COURT PROCEEDINGS

DETENTION

A juvenile can be detained in foster care, at a shelter care facility, at a secure detention facility, at a detoxification, chemical dependency or psychiatric facility, at an adult jail, or in the juvenile's home subject to electronic home monitoring. Most juveniles must appear before the court within 36 hours of being taken into custody for a detention hearing.

ARRAIGNMENT

At the arraignment hearing, the juvenile will appear in court and be asked to plead guilty or not guilty to the charges. Juveniles are entitled to representation by an attorney. A plea of guilty leads to a disposition (sentencing) hearing. If a juvenile pleads not guilty, there will be a trial.

PRETRIAL HEARING

In some cases, the judge orders a pretrial hearing to decide issues of law and allow the parties the opportunity to settle the case before trial.

TRIAL

A juvenile has the same legal protections during trial as an adult charged with a crime. Most juvenile trials are held before a judge who will decide whether the juvenile is guilty or not guilty. If the petition has been proved, there will be a disposition hearing.

DISPOSITION

The disposition may include restitution, fines, community service, probation, out-of-home placement, counseling or treatment, and/or victim/offender mediation. The court will take into consideration the seriousness of the offense, the child's prior history of offenses, and available programs and services.

Form 3. Notice in Lieu of Summons

STATE OF MINNESOTA

DISTRICT COURT - JUVENILE DIVISION

COUNTY OF _____

_____ JUDICIAL DISTRICT

In the Matter of the Welfare of:

NOTICE IN LIEU OF SUMMONS

Child _____

Court File No. _____

TO: The above-named child and to the child's parent(s), legal guardian(s), legal custodian(s) or person having custody and control of child:

ADDRESS:

PLEASE take notice that a petition has been filed with this Court alleging that the child is a:

- juvenile traffic offender
- juvenile petty offender
- juvenile delinquent

and the Court has directed that a hearing be held in this matter at the _____ Courthouse, Courtroom _____, in _____, Minnesota on _____ at _____ before a District Court Judge or Referee.

YOU ARE entitled to have a summons requiring your appearance served upon you. The Court has directed that this notice be mailed to you instead of issuing a summons. However, if you do not appear at the hearing, a summons will be issued.

Attached is a copy of the:

- charging document
- court order
- motion
- affidavit
- other: _____

ALSO attached is a statement describing the purpose of the hearing, the possible consequences of the hearing and an explanation of the child's basic rights, including the right of the child's parent(s), legal guardian(s), or legal custodian(s) to participate. **PLEASE READ ATTACHED ITEMS CAREFULLY.**

DATE: _____	BY THE COURT: _____
BY: _____ Deputy	_____ Court Administrator

Served by Regular Mail:	
DATE: _____	BY: _____

(11/02)

Form 5. Prosecutor's Request for Disclosure

STATE OF MINNESOTA

DISTRICT COURT - JUVENILE DIVISION

COUNTY OF _____

_____ **JUDICIAL DISTRICT**

In the Matter of the Welfare of:

**PROSECUTOR'S REQUEST
FOR DISCLOSURE**

_____ Child

Court File No. _____

Pursuant to Rule 10.05 of the Minnesota Rules of Juvenile Procedure, the County Attorney requests the child to make disclosure of the following items, which the child intends to introduce into evidence at the trial, certification, or extended jurisdiction juvenile hearing:

- (1) documents and tangible objects;
- (2) reports of examinations and tests;
- (3) notice of defenses;
- (4) names, addresses, and record of criminal convictions or delinquency adjudications of child's witnesses;
- (5) statements of child's witnesses;
- (6) details of and witnesses to the defense of alibi; and
- (7) record of child's prior proven or admitted delinquency offenses.

This request for disclosure incorporates by reference the language of Rule 10.05 and shall be deemed to be a request for disclosure of all information to which the County Attorney is entitled under the provisions of that Rule.

Date: _____

County Attorney

Form 6. Prosecutor Notice of Evidence and Identification Procedures

STATE OF MINNESOTA

DISTRICT COURT - JUVENILE DIVISION

COUNTY OF _____

_____ **JUDICIAL DISTRICT**

In the Matter of the Welfare of:

**PROSECUTOR NOTICE OF EVIDENCE
AND IDENTIFICATION PROCEDURES**

_____ Child

Court File No. _____

TO: THE ABOVE-NAMED CHILD AND COUNSEL FOR CHILD:

Pursuant to Rule 10.02 of the Minnesota Rules of Juvenile Procedure, you are advised that in the above-captioned case, the Prosecutor has:

- Evidence obtained as a result of a search, search and seizure, wiretapping, or other forms of electronic or mechanical eavesdropping;
- Confessions, admissions or statements in the nature of confessions made by the child;
- Evidence discovered as a result of confessions, admissions or statements in the nature of confessions made by the child;
- Identification procedures used during the investigation were:
 - Line-ups
 - Observations of the respondent
 - Exhibition of photographs
 - Other _____
 - None of above is known to the prosecution at this time; you will be notified if any is discovered.

Date: _____

_____ County Attorney

Form 7. Petition to Proceed as Pro Se Counsel

STATE OF MINNESOTA

DISTRICT COURT - JUVENILE DIVISION

COUNTY OF _____

_____ JUDICIAL DISTRICT

In the Matter of the Welfare of:

**PETITION TO PROCEED PRO SE
IN JUVENILE DELINQUENCY PROCEEDING**

_____ Child

Court File No. _____

My full name is _____, and I am the child in the above-entitled action.

I request the Court allow me to represent myself and state as follows:

1. I am _____ years old. My date of birth is _____. The last grade I attended in school is _____.
2. I have received and read the charging document in this matter.
3. I understand the charge(s) made against me in this case.
4. I understand that I have been charged with the offense(s) of :

_____ committed on or about _____ in _____ County, Minnesota.

5. I have discussed my desire to represent myself with an attorney whose name is _____.
6. I (have) (have not) been a patient in a mental hospital.
7. I (have) (have not) talked with or been treated by a psychiatrist or other person for a nervous or mental condition.
8. I (have) (have not) been ill recently.
9. I (have) (have not) recently taken pills or medicine.
10. I understand that I have the right to have an attorney represent me in these proceedings. I understand that if the Court grants my petition to represent myself, I will be responsible for preparing my case for trial and trying my case. I understand that I will be bound by the same rules as an attorney. I understand that if I fail to do something in a timely manner or make a mistake because of my unfamiliarity with the law, I will be bound by those decisions and must deal with them myself.
11. In making my decisions regarding the conduct of this case, I have the right to consult with standby counsel if one is assigned to this case.
12. I understand the Court will schedule a probable cause hearing if one has not already been held. At the probable cause hearing, I can request that the petition or indictment filed against me be dismissed for lack of probable cause. The preparation for, conduct of, and decisions made relating to that hearing will be my sole responsibility.
13. I understand that I am entitled to a court trial. I further understand that I will conduct all phases of the trial, including but not limited to writing and filing motions, making arguments to the Court, cross-examination of the witnesses for the prosecution, direct examination of my witnesses, making objections, opening statement and closing argument.
14. I understand I am entitled to require any witnesses I think are favorable to me to appear and testify at my trial by use of a subpoena.

15. I understand that a person who has a prior delinquency record can be given a longer out-of-home placement. The maximum statutory penalty the Court could impose if I am adjudicated delinquent is commitment to the Commissioner of Corrections until my 19th birthday. The maximum statutory penalty the court could impose if I am certified to adult court or prosecuted as an extended jurisdiction juvenile is commitment to the Commissioner of Corrections for a term as determined by the Minnesota Sentencing Guidelines.
16. I understand the Court may appoint a public defender to act as standby counsel in this case. However, I am under no obligation to seek advice from standby counsel. I understand that the role of standby counsel is as follows:
- a. Standby counsel will be physically present in the courtroom during all proceedings in my case.
 - b. Standby counsel will respond to requests for advice from me. Standby counsel will not initiate such discussion.
 - c. Support staff of the public defender, such as investigators, secretaries, law clerks, and legal service advisors will not be available to me.
 - d. If I need investigative services, expert services, waivers of fees, research, secretarial services, or any other assistance, I must ask the Court for the relief or assistance I need. Such request is made pursuant to Minnesota Statutes, section 611.21.
 - e. If I desire to conduct legal research, I will be expected to do it myself.
 - f. Standby counsel will not be prepared to try my case on the trial date unless ordered to prepare to do so by the Court.
 - g. Standby counsel will be present for all court appearances to consult with me if I request. Standby counsel will be seated either at the back of the courtroom or at counsel table, based on my wishes and the Court's order. In an effort to support my constitutional right to self-representation, standby counsel will not initiate motions, objections, arguments to the Court, or any other aspect of representation unless I have given approval to that specific aspect of representation.
 - h. If I wish to give up my right to represent myself, I know the Court will not automatically grant my request. The Court will consider the following in granting or denying that request: the stage of the proceedings, whether standby counsel is prepared to take over, the length of the continuance necessary for standby counsel to assume representation, the prejudice to either party, and any other relevant considerations.
 - i. If the Court grants my request to represent myself and orders standby counsel, the trial date may be continued if requested by the standby counsel.
 - j. If the Court orders standby counsel to represent me after the trial has started and jeopardy has attached, the Court may grant a mistrial if requested by my new attorney and reset the trial date. It is solely up to the Court whether to grant a mistrial.
17. I have read the above two pages, discussed them with counsel, and I understand the rights and responsibilities I have in representing myself. In consideration of those rights and responsibilities, I want to give up my right to be represented by an attorney and will represent myself.

Date: _____

_____ Child

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 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 special treatment or care for your physical or mental health;
 - g. 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. Consider imposition of additional consequences if you committed a “crime of violence” and/or if a gun or dangerous weapon was involved;
- k. Require you to submit a DNA sample if you have been charged with a felony; and/or
- l. 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. 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 9. Statement of Rights: Juvenile Petty Offender Proceedings

STATEMENT OF RIGHTS JUVENILE PETTY OFFENDER PROCEEDINGS

You have been charged with a petty offense 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. Require you to pay a fine of up to \$100;
 - b. Require you to take part in a community service project;
 - c. Require you to participate in a drug awareness program;
 - d. Place you on probation for up to six months;
 - e. Order you to undergo a chemical dependency evaluation and participate in an outpatient treatment program;
 - f. Order restitution for any damage to person(s) and/or property; and/or
 - g. Order you to perform other activities or participate in other outpatient treatment programs deemed appropriate by the judge.

8. If you plead guilty or the judge finds you guilty of a second or subsequent juvenile alcohol or controlled substance offense, in addition to the above penalties, the judge may:

- a. Send your driver's license or driving permit to the Commissioner of Public Safety who shall revoke it for one year or until your 18th birthday, whichever is longer.
- b. Suspend your driver's license or driving permit for up to 90 days, but allow you to travel to work.
- c. If you do not have a driver's license or driving permit, the judge may order denial of your driving privileges for one year or until your 18th birthday, whichever is longer.

9. If you plead guilty to, or the judge finds you committed a third juvenile alcohol or controlled substance offense, and a chemical dependency evaluation recommends inpatient treatment, you have a right to appointment of a public defender or other counsel at public expense.

10. Your parent(s), legal guardian(s), or legal custodians(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)

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; 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)

Form 11. Statement of Rights: Juvenile Probation Revocation

**STATEMENT OF RIGHTS
JUVENILE PROBATION REVOCATION**

A probation revocation is a hearing before a judge to decide if a juvenile violated a term or condition of probation, and if so, whether the judge should change the disposition.

You will be asked to admit or deny the allegations of the probation violation. You have the following rights:

1. You have the right to have an attorney represent you. You may have the right to an attorney appointed at public expense.

2. If you deny the allegations of the probation violation, you have a right to a hearing before a judge. The hearing must be held within seven days if you are removed from your home. If you are allowed to remain in your home pending the probation revocation hearing, the hearing must be held within a reasonable time. If you admit the probation violation, you give up your right to a probation revocation hearing.

3. Before the hearing, you are entitled to receive all the evidence of the probation violation that will be used against you, including probation revocation reports and all records relating to the proceedings.

4. At the probation revocation hearing, both you and the prosecuting attorney have the right to offer evidence, make arguments, subpoena witnesses, and call and cross-examine witnesses. You may testify in your own defense or remain silent throughout the hearing. You may present mitigating circumstances or other reasons why the probation violation, if proved, should not result in a change in the disposition order.

5. The probation violation must be proved by clear and convincing evidence. You have the right to appeal the decision of the court after a revocation hearing.

DATE: _____
(Signature of Child)

DATE: _____

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

Form 12. Waiver of Right to Contested Hearing in an Extended Jurisdiction Juvenile Case

STATE OF MINNESOTA

DISTRICT COURT - JUVENILE DIVISION

COUNTY OF _____

_____ JUDICIAL DISTRICT

In the Matter of the Welfare of:

**WAIVER OF RIGHT
TO CONTESTED HEARING IN AN
EXTENDED JURISDICTION JUVENILE CASE**

Child

Court File No. _____

I have been advised by my attorney and I understand the following rights:

1. My full name is _____ and I have been charged by Delinquency Petition in juvenile court with the offense(s) of: _____ which would be a felony if committed by an adult. This felony carries a presumptive sentence of _____ months in prison under the Minnesota Sentencing Guidelines and applicable statutes. [range]
2. The offense(s) is alleged to have occurred on _____ and I was at least 14 years old at the time, having a date of birth of _____.
3. For the purpose of this waiver only, I submit there is probable cause to believe I committed the offense(s).
4. I understand that I have a right to an attorney.
5. The prosecutor has brought a motion for extended jurisdiction juvenile prosecution, and I understand I have a right to a hearing before a judge.
6. At that hearing, the prosecutor must show by clear and convincing evidence that designating the proceeding as an extended jurisdiction juvenile prosecution serves public safety. I have discussed the public safety factors with my attorney.
7. I understand I could present witnesses and evidence at that hearing.
8. I understand I could cross-examine all witnesses who testify for the state.
9. I understand I could present arguments against the extended jurisdiction juvenile prosecution.
10. I understand that by waiving my right to a hearing I agree that my case can proceed to a jury trial on the above-named offense(s). If I am found guilty, I will be subject to the penalties of both juvenile and adult court, including a stayed sentence under Minnesota Sentencing Guidelines and criminal statutes.
11. I have discussed with my attorney and understand the potential maximum penalties under the Minnesota Sentencing Guidelines and criminal statutes. I have discussed and understand that if I violate the terms of the stayed adult sentence, I have a right to a hearing, but if the court finds the violation proven, I will be in the adult court system where a prison sentence could be imposed. We have discussed and I understand that there may be sentencing departures, either upward if the court finds aggravating circumstances, or downward if the court finds mitigating factors in the case.
 No promise of any agreement has been made to me.
 The following agreement has been reached in exchange for my waiver:

12. I understand I have a right to discuss my case with my parent(s), legal guardian(s), or legal custodian(s), and I have either done so or waive my right to do so.
13. I understand the court will find I represent a danger to the public safety if kept solely within the juvenile system and will order an extended jurisdiction juvenile prosecution.
14. If a psychological evaluation has been completed, I understand I may request additional psychological evaluations and explore alternative treatment programs to find a suitable juvenile disposition option and demonstrate to the court that I do not represent a danger to the public safety if I remain in the juvenile system.
15. Based upon all of this information and investigation, I am choosing to waive or give up my right to have an extended jurisdiction juvenile hearing.
16. No threats have been made to coerce me into waiving these rights. No promises have been made to me except as set forth in paragraph 11.
17. I am waiving or giving up my rights freely and voluntarily. I have had sufficient time to discuss my rights and options with my attorney.

DATE:	_____	_____
		Child
DATE:	_____	_____
		Child's Attorney

Form 13. Waiver of Right to Contested Hearing in a Non-Presumptive Certification Case

STATE OF MINNESOTA

DISTRICT COURT - JUVENILE DIVISION

COUNTY OF _____

_____ JUDICIAL DISTRICT

In the Matter of the Welfare of:

**WAIVER OF RIGHT
TO CONTESTED HEARING IN A
NON-PRESUMPTIVE CERTIFICATION CASE**

Child

Court File No. _____

I have been advised by my attorney and I understand the following rights:

1. My full name is _____ and I have been charged by Delinquency Petition in juvenile court with the offense(s) of: _____ which would be a felony if committed by an adult. This felony carries a presumptive sentence of _____ months in prison under the Minnesota Sentencing Guidelines and applicable statutes. [range]
2. The offense(s) is alleged to have occurred on _____ and I was at least 14 years old at the time, having a date of birth of _____ .
3. For the purpose of this waiver only, I submit there is probable cause to believe I committed the offense(s).
4. I understand that I have a right to an attorney.
5. The prosecutor has brought a motion for certification, and I understand I have a right to a hearing before a judge.
6. At that hearing, it is the prosecutor's burden to demonstrate to the judge by clear and convincing evidence that retaining my case in juvenile court does not serve public safety. I have discussed the public safety factors with my attorney.
7. I understand I could present witnesses and evidence at that hearing.
8. I understand I could cross-examine all witnesses who testify for the state.
9. I understand I could present arguments against certification.
10. I understand that by waiving my right to a hearing I agree that my case can proceed to adult court for a jury trial on the above-named offense(s) and be subject to the penalties under Minnesota Sentencing Guidelines and criminal statutes.
11. I have discussed with my attorney and understand the potential maximum penalties under the Minnesota Sentencing Guidelines and criminal statutes. We have discussed and I understand that there may be sentencing departures, either upward if the court finds aggravating circumstances, or downward if the court finds mitigating factors in the case.

No promise of any agreement has been made to me.

The following agreement has been reached in exchange for my waiver:

12. I understand I have a right to discuss my case with my parent(s), legal guardian(s), or legal custodian(s), and I have either done so or waive my right to do so.
13. I understand the court will find that I represent a danger to the public safety if kept within the juvenile system and will order certification for trial as an adult.
14. If a psychological evaluation has been completed, I understand I may request additional psychological evaluations and explore alternative treatment programs to find a suitable juvenile disposition option and demonstrate to the court that I do not represent a danger to the public safety if my case is kept in the juvenile system.
15. Based upon all of this information and investigation, I am choosing to waive or give up my right to have a contested certification hearing.
16. No threats have been made to coerce me into waiving these rights. No promises have been made to me except as set forth in paragraph 11.
17. I am waiving or giving up my rights freely and voluntarily. I have had sufficient time to discuss my rights and options with my attorney.

DATE:	_____	_____
		Child
DATE:	_____	_____
		Child's Attorney

Form 14. Waiver of Right to Contested Hearing in a Presumptive Certification Case

STATE OF MINNESOTA

DISTRICT COURT - JUVENILE DIVISION

COUNTY OF _____

_____ JUDICIAL DISTRICT

In the Matter of the Welfare of:

**WAIVER OF RIGHT
TO CONTESTED HEARING IN A
PRESUMPTIVE CERTIFICATION CASE**

Child

Court File No. _____

I have been advised by my attorney and I understand the following rights:

1. My full name is _____ and I have been charged by Delinquency Petition in juvenile court with the offense(s) of: _____ which would be a felony if committed by an adult. This felony carries a presumptive sentence of _____ months in prison under the Minnesota Sentencing Guidelines and applicable statutes. [range]
2. The offense(s) is alleged to have occurred on _____ and I was 16 or 17 years old at the time, having a date of birth of _____ .
3. For the purpose of this waiver only, I submit there is probable cause to believe I committed the offense(s).
4. I understand that I have a right to an attorney.
5. The prosecutor has brought a motion for certification, and I understand I have a right to a hearing before a judge.
6. At that hearing, it is my burden to show the judge by clear and convincing evidence that retaining my case in juvenile court serves public safety. I have discussed the public safety factors with my attorney.
7. I understand I could present witnesses and evidence at that hearing.
8. I understand I could cross-examine all witnesses who testify for the state.
9. I understand I could present arguments against certification. I further understand that if I prevailed at the certification hearing, the court must order that my case proceed as an extended jurisdiction juvenile prosecution.
10. I understand that by waiving my right to a hearing I agree that my case can proceed to adult court for a jury trial on the above-named offense(s) and be subject to the penalties under Minnesota Sentencing Guidelines and criminal statutes.
11. I have discussed with my attorney and understand the potential maximum penalties under the Minnesota Sentencing Guidelines and criminal statutes. I have discussed and understand that the charged offenses presume an executed prison sentence. We have discussed and I understand that there may be sentencing departures, either upward if the court finds aggravating circumstances, or downward if the court finds mitigating factors in the case.

No promise of any agreement has been made to me.

The following agreement has been reached in exchange for my waiver:

12. I understand I have a right to discuss my case with my parent(s), legal guardian(s), or legal custodian(s), and I have either done so or waive my right to do so.
13. I understand the court will find that I represent a danger to the public safety if kept within the juvenile system and will order certification for trial as an adult.
14. If a psychological evaluation has been completed, I understand I may request additional psychological evaluations and explore alternative treatment programs to find a suitable juvenile disposition option and demonstrate to the court that I do not represent a danger to the public safety if returned to the extended jurisdiction juvenile system.
15. Based upon all of this information and investigation, I am choosing to waive or give up my right to have a contested certification hearing.
16. No threats have been made to coerce me into waiving these rights. No promises have been made to me except as set forth in paragraph 11.
17. I am waiving or giving up my rights freely and voluntarily. I have had sufficient time to discuss my rights and options with my attorney.

DATE:	_____	_____
		Child
DATE:	_____	_____
		Child's Attorney

Form 15. Petition to Enter Plea of Guilty in Extended Jurisdiction Juvenile Case

STATE OF MINNESOTA

DISTRICT COURT - JUVENILE DIVISION

COUNTY OF _____

_____ JUDICIAL DISTRICT

In the Matter of the Welfare of:

**PETITION TO ENTER PLEA OF GUILTY
IN EXTENDED JURISDICTION JUVENILE
CASE**

Child

Court File No. _____

1. My full name is _____ and I have been charged by Delinquency Petition in juvenile court with the offense(s) of: _____ which would be a felony if committed by an adult. This felony carries a presumptive sentence of _____ months in prison under the Minnesota Sentencing Guidelines and applicable statutes. [range]
2. The offense(s) is alleged to have occurred on _____ and I was _____ years old at the time, having a date of birth of _____ .
3. In understand the charge(s) against me in this case.
4. I understand that I have a right to an attorney.
5. I am represented by an attorney, and:
 - a. I feel that I have had sufficient time to discuss my case with my attorney.
 - b. I am satisfied that my attorney is fully informed as to the facts of this case.
 - c. My attorney has discussed possible defenses that I may have.
 - d. I am satisfied that my attorney has represented my interests and has fully advised me.
6. I understand I have the right to a jury trial, and at that trial I have the following rights:
 - a. The right to be presumed innocent unless and until proven guilty beyond a reasonable doubt.
 - b. The right to be present and cross-examine all witnesses brought by the prosecutor.
 - c. The right to subpoena and bring in my own witnesses.
 - d. The right to remain silent or testify in my own defense. I understand that if I choose to remain silent, my silence could not be used against me.
 - e. The right to a unanimous verdict by the jury.
7. I understand that if I enter a plea of guilty to an offense, I give up the rights listed above in #6.
8. I understand that the judge will not accept a plea from someone who says they are innocent. I am not saying that I am innocent of the charge(s) to which I am pleading guilty.
9. I am entering my plea of guilty freely and voluntarily.
 No promise of any agreement has been made to me.
 The following agreement has been reached in exchange for my plea:

10. If the court does not accept my guilty plea, I have a right to withdraw my plea and anything said in court cannot be used against me. However, if the court accepts my guilty plea, there will be a disposition in juvenile court and an adult prison sentence will be stayed.
11. I have discussed with my attorney and understand the potential maximum penalties under the Minnesota Sentencing Guidelines and criminal statutes. We have discussed and I understand that there may be sentencing departures, either upward if the court finds aggravating circumstances, or downward if the court finds mitigating factors in the case. I understand that if the court finds I have violated the terms of the stayed prison sentence, the court can send me to prison.
12. I understand I have a right to discuss my case with my parent(s), legal guardian(s), or legal custodian(s), and I have either done so or waive my right to do so.
13. I understand I could be on probation until my 21st birthday.
14. I understand that my plea may increase the penalties for future offenses, and this plea will be used to compute my adult criminal history score.
15. If I plead guilty and I am adjudicated for a “crime of violence,” it is illegal for me to possess a pistol, semiautomatic military-style assault weapon, or any other firearm until 10 years after my probation has expired. Minnesota Statutes, sections 624.713, subdivision 1(b) and 624.712, subdivision 5 list the offenses that are a “crime of violence.”
16. If I plead guilty to a felony, I may be required to submit a DNA sample. For felony driving while impaired offenses and most sex offenses, a mandatory period of conditional release will follow the adult prison sentence if it is executed. Violating the terms of this conditional release may increase the time I serve in prison. In this case, the period of conditional release is _____ years.
17. If I plead guilty to a sexual offense or predatory offense, I may be required to have a psychosexual evaluation, register as a predatory offender, and submit a DNA sample.
18. I understand that if I am not a citizen of the United States, my guilty plea may result in deportation, exclusion from admission to the United States, or denial of naturalization as a United States citizen.
19. I understand that my probation or parole could be revoked because of the guilty plea to this offense.
20. I (have) (have not) been a patient in a mental hospital.
21. I (have) (have not) talked with or been treated by a psychiatrist or other person for a nervous or mental condition.
22. I (have) (have not) been ill recently.
23. I (have) (have not) recently taken pills or medicine.
24. Based upon all of this information, I am choosing to waive or give up my right to have a jury trial.
25. No threats have been made to coerce me into waiving these rights. No promises have been made to me except as set forth in paragraph 9.
26. I am waiving or giving up my rights freely and voluntarily. I have had sufficient time to discuss my rights and options with my attorney.

DATE:	_____	_____
		Child
DATE:	_____	_____
		Child’s Attorney

Form 16. Petition to Enter Plea of Guilty in Juvenile Delinquency Matter

STATE OF MINNESOTA

DISTRICT COURT - JUVENILE DIVISION

COUNTY OF _____

_____ JUDICIAL DISTRICT

In the Matter of the Welfare of:

**PETITION TO ENTER PLEA OF GUILTY
IN JUVENILE DELINQUENCY MATTER**

Child

Court File No. _____

1. My full name is _____. I am _____ years old, and my date of birth is _____. The last grade that I went through in school is _____ or I am currently attending the _____ grade in school.
2. I have received and read a copy of the charging document, and discussed it with my attorney.
3. I understand the charge(s) made against me in this case.
4. I understand that I have been charged with the offense(s) of :

_____ committed on or about _____ in _____ County, Minnesota.

5. I am represented by an attorney, whose name is _____ and:
 - a. I feel that I have had sufficient time to discuss my case with my attorney.
 - b. I am satisfied that my attorney is fully informed as to the facts of this case.
 - c. My attorney has discussed possible defenses that I may have.
 - d. I am satisfied that my attorney has represented my interests and has fully advised me.
6. I understand I have the right to a trial before a judge, and at that trial I have the following rights:
 - a. The right to be presumed innocent unless and until the prosecutor proves me guilty beyond a reasonable doubt.
 - b. The right to be present and ask questions of all witnesses brought by the prosecutor.
 - c. The right to subpoena and bring in my own witnesses.
 - d. The right to testify on my behalf or remain silent. I understand if I choose to remain silent the court cannot use my silence against me.
7. I understand that if I plead guilty to an offense, I give up my right to a trial in this case, including the rights stated in #6.
8. I understand that the judge will not accept a plea from someone who says they are innocent. I am not saying that I am innocent of the charge(s) to which I am pleading guilty.
9. I am entering my plea of guilty freely and voluntarily.
 No promise of any agreement has been made to me.
 The following agreement has been reached in exchange for my plea:

10. If the court does not accept my guilty plea:
 - a. I have the right to withdraw my guilty plea and have a trial.
 - b. Anything I said in court about my plea cannot be used against me.
11. I understand that if the court accepts my guilty plea, there will be a disposition or sentencing.
12. I understand that the court could place me on probation until my 19th birthday. During that time, the court may change the disposition.
13. I understand that the court can:
 - a. Place me out of home;
 - b. Require me to participate in education and/or treatment programs;
 - c. Require me to do community work service and/or pay a fine;
 - d. Require me to pay restitution;
 - e. Order cancellation, revocation, or suspension of my driver’s license; and/or
 - f. Require me to meet school graduation requirements.
14. If I violate the conditions of probation or commit a new offense, I could be arrested and placed in detention.
15. If the court adjudicates me for the offense I am admitting, I will have a juvenile court record.
16. I understand this offense could be used against me if I commit a future felony-level offense and the prosecutor in that case wishes to move for extended jurisdiction juvenile or certify me to adult court.
17. If I am admitting a felony offense today, and the offense was committed after my 14th birthday, I understand it will be used to compute my adult criminal history score.
18. If I plead guilty and I am adjudicated for a “crime of violence,” it is illegal for me to possess a pistol, semiautomatic military-style assault weapon, or any other firearm until 10 years after my probation has expired. Minnesota Statutes, sections 624.713, subdivision 1(b) and 624.712, subdivision 5 list the offenses that are a “crime of violence.”
19. If I plead guilty to a felony, I may be required to submit a DNA sample.
20. If I plead guilty to a sexual offense or predatory offense, I may be required to have a psychosexual evaluation, register as a predatory offender, and submit a DNA sample.
21. I understand that if I am not a citizen of the United States, my guilty plea may result in deportation, exclusion from admission to the United States, or denial of naturalization as a United States citizen.
22. I understand that my probation or parole could be revoked because of the guilty plea to this offense.
23. I understand that my plea may result in increasing the level of a future offense to a gross misdemeanor or felony.
24. I (have) (have not) been a patient in a mental hospital.
25. I (have) (have not) talked with or been treated by a psychiatrist or other person for a nervous or mental condition.
26. I (have) (have not) been ill recently.
28. I (have) (have not) recently taken pills or medicine.
29. I have read this petition to plead guilty and I understand it. I am waiving or giving up my rights freely and voluntarily. I have had sufficient time to discuss my rights and options with my attorney.

DATE:	_____	Child
DATE:	_____	Child’s Attorney