

STATE OF MINNESOTA

IN SUPREME COURT

CX-01-926

**PROMULGATION OF AMENDMENTS TO THE
MINNESOTA RULES OF JUVENILE DELINQUENCY PROCEDURE**

ORDER

In its report dated June 4, 2007, the Supreme Court Juvenile Delinquency Rules Committee recommended certain amendments to the Minnesota Rules of Juvenile Delinquency Procedure. By order dated June 27, 2007, this Court established an August 31, 2007, deadline for submitting written comments on the proposed amendments. No comments were submitted. The Supreme Court reviewed the proposed amendments, and is fully advised in the premises.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The attached amendments to the Minnesota Rules of Juvenile Delinquency Procedure are prescribed and promulgated for the regulation and procedure of juvenile delinquency matters in the courts of the State of Minnesota.
2. The attached amendments shall govern all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2008.
3. The inclusion of committee comments is made for convenience and does not reflect court approval of the comments.
4. The Juvenile Delinquency Rules Committee shall continue to serve and monitor said rules and amendments and to hear and accept comments for further changes, to be submitted to the Court from time to time.

DATED: October 11, 2007

BY THE COURT:

/s/
Russell A. Anderson
Chief Justice

AMENDMENTS TO THE MINNESOTA RULES OF JUVENILE DELINQUENCY PROCEDURE

Note to publishers: Deletions are indicated by a line drawn through the word, and additions are underlined. New text that should be underlined in the final publication is indicated by a double underline.

1. Rule 4.03 Warrants for Immediate Custody

Amend the title language in Rule 4.03, subs. 2 and 3 as follows:

Subd. 2. Warrant for Delinquent Offenders.

Subd. 3. Warrant for Juvenile Petty or Traffic ~~Offenses~~Offenders.

Amend Rule 4.03, subd. 4(A) as follows:

(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~~in accordance with Rule 5.02, subdivisions 3 and 4, 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;

2. Rule 5.02 Definitions

Amend the title and preamble language of Rule 5.02, subd. 3 as follows:

Subd. 3. Place of Detention for Juvenile Delinquent Offenders. A place of detention for a juvenile delinquent offender can be any one of the following places:

Insert a new subdivision 4 in Rule 5.02 as follows:

Subd. 4. Place of Detention for Juvenile Petty or Traffic Offenders. A place of detention for a juvenile petty or traffic offender can be any one of the following places:

(A) a child's relative;

(B) a designated caregiver under Minnesota Statutes, chapter 257A; or

(C) a shelter care facility.

3. Rule 5.04 Release or Continued Detention

Amend Rule 5.04, subd. 3 as follows:

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 time period, a 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~~ a juvenile facility in accordance with Rule 5.02, subdivision 3. The court may extend the time for a detention hearing for good cause pursuant to Rule 5.07, subdivision 7 only if a 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 charging document has been filed with the court within that 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~~ a juvenile facility in accordance with Rule 5.02, subdivision 3. The time for a detention hearing shall not be extended.

4. Rule 5.07 Detention Hearing

Amend Rule 5.07, subd. 6(B) as follows:

(B) *Detention.* If the findings required by Rule 5.07, 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. An order stated on the record shall also be reduced to writing by the court within five (5) days of entry of the order.

5. Rule 5.08 Detention Review

Amend Rule 5.08, subd. 1 as follows:

Subdivision 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. An order stated on the record shall also be reduced to writing by the court within five (5) days of entry of the order.

Amend Rule 5.08, subd. 2(D) as follows:

(D) *Continued Detention.* The court may continue the child in detention if the court makes findings pursuant to Rule 5.07, subdivision 5. An order stated on the record shall also be reduced to writing by the court within five (5) days of entry of the order.

6. Comment—Rule 5

Amend the seventh paragraph of the comment to Rule 5 as follows:

Minn. R. Juv. Del. P. 5.04, subd. 3 is based upon Minnesota Statutes, section 260B.176, subd. 2 (2002). The statute 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. Minnesota Statutes, section 260B.176, subd. 2 (2002). See also 42 U.S.C.A., section 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 charging document within twenty-four (24) hours of the child being taken into custody, excluding Saturdays, Sundays and legal holidays. Minn. R. Juv. Del. 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 in accordance with Minn. R. Juv. Del. P. 5.02, subd. 3. Id. See also 42 U.S.C.A. section 5633(a)(14) (1995). The placement options in Minn. R. Juv. Del. P. 5.02, subd. 4 are not referenced in Minn. R. Juv. Del. P. 5.04, subd. 3(A) and (B) because the placement limitations in Minn. Stat. § 260B.181, subs. 2 and 3 preclude the initial detention of juvenile petty offenders in an adult jail or municipal lockup.

7. Rule 6.03 Petition

Amend Rule 6.03, subd. 3 by adding a new paragraph (G) as follows:

Subd. 3. Contents of the Delinquency Petition. Every petition alleging a child is delinquent shall contain:

- (A) a concise statement alleging the child is delinquent;
- (B) a description of the alleged offense and reference to the statute or ordinance which was violated;
- (C) the applicable Minnesota Offense Code (MOC);
- (D) the name, date of birth, address, and race of the child;
- (E) the names and addresses of the child's parent(s), legal guardian, legal custodian,

or nearest known relative;

(F) the name and address of the child's spouse; and

(G) other administrative information authorized by the Supreme Court Juvenile Delinquency Rules Committee and published by the State Court Administrator.

Amend Rule 6.03, subd. 5 by adding a new paragraph (G) as follows:

Subd. 5. Contents of Petition Alleging Juvenile Petty Offender or Juvenile Traffic Offender. Every petition alleging a child is a juvenile petty offender or alleging a child is a juvenile traffic offender shall contain:

(A) a concise statement alleging that the child is a juvenile petty offender or a juvenile traffic offender;

(B) the name, address, date of birth, and for juvenile traffic offenders, the driver's license number of the child, if known;

(C) the name and address of the parent(s), legal guardian, or legal custodian of the child;

(D) a description of the offense charged and reference to the statute or ordinance which is the basis for the charge;

(E) the applicable Minnesota Offense Code (MOC);

(F) the date, county, and place of the alleged offense; and

(G) other administrative information authorized by the Supreme Court Juvenile Delinquency Rules Committee and published by the State Court Administrator.

8. **Comment—Rule 6**

Amend the fifth paragraph and add a new sixth paragraph to the comment to Rule 6 as follows:

Minn. R. Juv. Del. P. 6.03, subd. 2 provides that a petition shall be signed by the prosecuting attorney before it is filed with the court. Minnesota Statutes, section 260B.141, subd. 1 (2002) 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. Del. P. 6.03, subd. 3 sets forth the necessary contents of the petition.~~

Minn. R. Juv. Del. P. 6.03, subs. 3 and 5 set forth the necessary contents of the petition. A sample petition form as well as a listing of the administrative content approved by the Juvenile Delinquency Rules Committee will be published by the State Court Administrator on the Minnesota Judicial Branch website.

9. **Rule 15.07 Probation Violation**

Amend Rule 15.07, subd. 4(D) as follows:

(D) *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 proceed as follows:

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

or

(2) for a child who was previously granted a continuance without adjudication pursuant to Rule 15.05, subdivision 4, adjudicate the child and order a disposition pursuant to Minnesota Statutes, section 260B.198.

The dispositional order shall comply with Rule 15.05, subdivisions 2 and 3.

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

10. Rule 16.05 Order

Insert a new Rule 16.05 as follows:

Rule 16.05 Order

Orders issued pursuant to this rule shall be in writing.

11. Rule 17.09 Adjudication and Disposition

Amend Rule 17.09, subd. 2 as follows:

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, 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, 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. The court administrator shall serve the written findings as provided in Rule 28.

12. Rule 20.01 Proceeding when Child is Believed to be Incompetent

Amend Rule 20.01, subd. 4(E) as follows:

(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~~ a written order finding competency. Otherwise, the court shall enter ~~an~~ a written order finding incompetency.

13. Rule 21.02 Proceedings in Forma Pauperis

Amend Rule 21.02, subd. 1 as follows:

Subdivision 1. Generally. An indigent child wanting to appeal, cross-appeal, or defend an appeal taken by the prosecuting attorney shall make application to the office of the state public defender.

Upon the administrative determination by the state public defender's office that the applicant is financially and otherwise eligible for representation, the state public defender is automatically appointed for that purpose without order of the trial court. Any applicant who contests a decision of the state public defender's office regarding eligibility may apply to the Minnesota Supreme Court for relief.

If the parents of a child are financially able to contribute to some or all of the costs of representation, they may be ordered to pay the State of Minnesota all or a portion of those costs.

14. Rule 21.03 Appeal by Child

Amend Rule 21.03, subd. 1 as follows:

Subdivision 1. Right of Appeal. A child may appeal as of right from an adverse final order and certain non-final orders, as enumerated in Rule 21.03, subdivision 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, subdivision 3. A motion for a new trial is not necessary in order to appeal.

The trial 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 trial 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 appellate court may review any other matter as the interests of justice require. In addition to all powers of review presently existing, the appellate court may review the sentence or disposition to determine whether it is consistent with the

standards set forth in Rule 15.05, 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 Rule 21.03, subdivision 3;
- (2) continuance without adjudication and disposition in delinquency proceedings pursuant to Minnesota Statutes, section 260B.198, subdivision 1(a) or (b);
- (3) adjudication and disposition in delinquency proceedings pursuant to Minnesota Statutes, 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) extended jurisdiction juvenile prosecution designation, whether the order is entered or stayed pursuant to Rule 21.03, subdivision 3;
- (7) conviction, disposition, 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;
- (10) an order revoking probation including an order adjudicating a child delinquent after the child was granted a continuance without adjudication;
- (11) an order revoking extended jurisdiction juvenile status; and
- (12) 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.

Amend Rule 21.03, subd. 2(B)(1) as follows:

(1) *Time for Taking an Appeal.* An appeal shall be taken within thirty (30) days after service of the notice of the filing of the appealable order upon the child's counsel by the court administrator as provided in Rule 28.

Amend Rule 21.03, subd. 4 as follows:

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 trial 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 Rule 21.03, subdivision 3 of this rule, Minnesota Statutes, 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 trial court shall make written findings on each of the above factors. The trial 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 trial court in determining the disposition imposed in juvenile proceedings.

15. **Rule 21.04 Appeal by Prosecuting Attorney**

Amend Rule 21.04, subd. 1 as follows:

Subdivision 1. Scope of Appeal. The prosecuting attorney may appeal as of right from:

(A) sentences or dispositions imposed or stayed in extended jurisdiction juvenile cases;

(B) denial of a motion for certification or denial of a motion for designation as an extended jurisdiction juvenile prosecution;

(C) denial of a motion to revoke extended jurisdiction juvenile status following an admission of a violation of probation or a determination that a violation of probation has been proven;

(D) denial of a motion to revoke the stay of the adult sentence of an extended jurisdiction juvenile following an admission of a violation of probation or a determination that a violation of probation has been proven;

(E) pretrial orders, including suppression orders; and

(F) orders dismissing the charging document for lack of probable cause when the dismissal was based solely on a question of law.

Appeals from disposition or sentence shall only include matters that arose after adjudication or conviction. In addition to all powers of review presently existing, the appellate court may review the sentence or disposition to determine whether it is consistent with the standards set forth in Rule 15.05, subdivisions 2 and 3.

Amend Rule 21.04, subd. 3(C)(1) as follows:

(1) *Time for Appeal.* The prosecuting attorney may not appeal until all issues raised during the evidentiary hearing and pretrial conference have been determined by the trial court. The appeal shall be taken within ~~five (5)~~twenty (20) days after notice of entry of the appealable order 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.

Amend Rule 21.04, subd. 4 as follows:

Subd. 4. Stay. Upon oral notice that the prosecuting attorney intends to appeal a pretrial order, the trial court shall order a stay of the proceedings for ~~five (5)~~twenty (20) days to allow time to perfect the appeal.

Amend Rule 21.04, subd. 5 as follows:

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 Rule 5 or, for children certified to adult court, Minnesota Rules of Criminal Procedure 6.02, subdivisions 1 and 2. The trial 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.

16. Rule 28. Copies of Orders

Amend Rule 28 as follows:

Rule 28. ~~Copies of Orders~~Notice of Orders or Judgments

~~Court orders shall be stated on the record at the hearing or~~Within five (5) days of filing of a written order or decision or entry of a judgment, the court administrator shall serve 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. The order shall be accompanied by a notice of filing, which shall include notice of the right to appeal a final order pursuant to Rule 21. The State Court Administrator shall develop a "notice of filing" form, which shall be used by court administrators.~~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.~~

17. **Appendix of Forms**

Delete Form 1. Petition from the Table of Forms

Amend the Introductory Statement to the forms as follows:

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).~~ A sample petition may be found on the Minnesota Judicial Branch website.