

STATE OF MINNESOTA
IN SUPREME COURT

C6-84-2165

PROMULGATION OF AMENDMENTS TO
THE RULES OF JUVENILE PROCEDURE

ORDER

WHEREAS, the Supreme Court Advisory Committee on Rules of Juvenile Procedure has submitted a report and recommended interim amendments to the Rules of Juvenile Procedure, and

WHEREAS, the Supreme Court has reviewed the proposed amendments and is fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The attached amendments to the Rules of Juvenile Procedure be, and hereby are, prescribed and promulgated for the regulation of practice and procedure in juvenile matters in the courts of the State of Minnesota.
2. The inclusion of Advisory Committee comments is made for convenience and does not reflect court approval of the comments made therein.
3. The Advisory Committee shall continue to serve to review the Rules of Juvenile Procedure, including the interim amendments, and to hear and accept comments for further changes, to be submitted to the court for consideration.
4. These amendments to the Rules of Juvenile Procedure shall govern all juvenile actions commenced or arrests made after 12 o'clock midnight January 1, 1995 and shall be in effect until March 31, 1996.

DATED: *December 1, 1994*

OFFICE OF
APPELLATE COURTS

DEC 1 - 1994

FILED

BY THE COURT:

A.M. Keith
A.M. Keith
Chief Justice

**AMENDMENTS TO THE
RULES OF JUVENILE PROCEDURE**

November 1, 1994

RULE 4. RIGHT TO COUNSEL

REPEAL EXISTING RULE 4 AND INSERT A NEW RULE AND COMMENTS AS FOLLOWS:

RULE 4 RIGHT TO COUNSEL

RULE 4.01 Generally The child has the right to be represented by an attorney. This right attaches no later than when the child first appears in court. The attorney shall initially consult with the child privately, outside of the presence of the child's parent(s) or guardian. The attorney shall act solely as the counsel for the child.

RULE 4.02 Appointment of Counsel

Subd. 1 Felonies and Gross Misdemeanors In any proceeding in which the child is charged with a felony or gross misdemeanor, the court shall appoint counsel at public expense to represent the child, if the child can not 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 at all stages of the proceedings.

Subd. 2 Misdemeanors In any proceeding in which the child is charged with a misdemeanor, the court shall appoint counsel at public expense to represent the child if the child can not afford counsel and private counsel has not been retained to represent the child, and the child has not waived the right to counsel. If the child waives the right to counsel, the court may appoint stand-by counsel to be available to assist and consult with the child at all stages of the proceedings.

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. If out-of-home placement is 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.

RULE 4.03 Waiver of Right to Counsel

Subd. 1 Conditions of Waiver Any waiver of counsel must be made knowingly, intelligently, and voluntarily. Any waiver shall be in writing and 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, guardian, 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 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.

RULE 4.04 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 4.05 Eligibility for Court Appointed Counsel at Public Expense

Subd. 1 When Parent or Child Cannot Afford to Retain Counsel A child and his parent(s) are financially unable to obtain counsel if the child is unable to obtain adequate representation without substantial hardship for the child or the child's family. The court shall inquire to determine the financial eligibility of a child for the appointment of counsel. The ability to pay part of the cost of adequate representation shall not preclude the appointment of counsel for the child.

Subd. 2 When Parent Can Afford to Retain Counsel If the parent(s) of a child can afford to retain counsel in whole or in part and have not retained counsel for the child, and the child cannot afford to retain counsel, the child is entitled to representation by counsel appointed by the court at public expense. After giving the parent(s) a reasonable opportunity to be heard, the court may order that service of counsel shall be at the parent(s)'s expense in whole or in part depending upon their ability to pay.

RULE 4.06 Right of Parent(s), Guardian(s), and Guardian Ad Litem to Counsel

Subd. 1 Right of Parent(s) and Guardian(s) The parent(s) or guardian of a child who is the subject of a delinquency proceeding have the right to assistance of counsel after the court has found that the allegations of the petition have been proved. The court has discretion to appoint an attorney to represent the parent(s) or guardian at public expense if

they are financially unable to obtain counsel in any other case in which the court finds such appointment is desirable.

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 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 court may appoint separate counsel to represent the guardian ad litem.

Comment to Rule 4

Minn. R. Juv. P. 4 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).

Minn. R. Juv. R. 4.01 provides that the right to counsel attaches no later than the child's first appearance in juvenile court. See Minn. Stat. § 611.262 (1994). 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. 4.02 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) 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 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. 4.02, subd. 1 requires the court to appoint stand-by 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. App. 1993) pet. for rev. denied (Minn. Feb. 24, 1994); State v. Savior, 480 N.W.2d 693 (Minn. App. 1992); State v. Parson, 457 N.W.2d 261 (Minn. App. 1990) pet. for rev. denied

(Minn. July 31, 1990); State v. Lande, 376 N.W.2d 483 (Minn. 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. 4.02, subd. 2 requires a court to appoint counsel for a child charged with a misdemeanor unless that child affirmatively waives counsel as provided in R. 4.03. Minn. R. Juv. P. 4.02, 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.

Minn. R. Juv. P. 4.02, subd. 3 requires that in any proceeding in which out-of-home placement is proposed, the court shall appoint counsel or stand-by counsel for the child. 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. 4.02, subd. 3 places the prosecution and court on notice that out-of-home placement may not occur unless counsel or stand-by counsel is appointed. 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 or prejudicing the right to a fair and impartial trial. Minn. R. Juv. P. 4.02, 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 provide the underlying predicate for an out-of-home placement. See e.g., In re D.S.S., 506 N.W.2d 650, 655 (Minn. 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. R. Juv. P. 4.03 prescribes the circumstances under which a child 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. 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) ("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. 4.02 requires juvenile courts to appoint stand-by 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 (stand-by 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 his 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, subd.1. Minn. R. Juv. P. 4.03, 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. 4.03, 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) or guardian. 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 reoffends and appears again in juvenile court or in criminal court. United States v. Nichols, --- U.S. ---, 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 stand-by 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. 4.04 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. 4.05 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. 4.05, 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) ("[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. 1986).

Minn. R. Juv. P. 4.06 implements the rights of a child's parent(s) or guardian 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 state expense if they are eligible for such services.

RULE 15 WAIVER OF COUNSEL AND OTHER CONSTITUTIONAL RIGHTS

Repeal Rule 15.01; Applicability and Rule 15.02; Waiver of Right to Counsel.

RULE 31 APPEALS

REPEAL EXISTING RULE 31 AND INSERT A NEW RULE AND COMMENTS AS FOLLOWS:

RULE 31 APPEALS

RULE 31.01 Generally

This rule governs the procedure for appeals from 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 31.02 Proceedings in Forma Pauperis

An indigent child wanting to appeal, cross-appeal, or defend an appeal taken by the

prosecuting authority shall make application to the office of the public defender addressed as follows:

Minnesota State Public Defender
The Law School, University of Minnesota
Minneapolis, MN 55455

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 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, the district court may order that payment be made to the State of Minnesota.

RULE 31.03 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 this rule at Subd. 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. 3. A motion for a new trial is not necessary in order to appeal.

The district 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 district court shall not determine whether an offense will be adjudicated 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 inconsistent with statutory requirements, unreasonable, inappropriate, excessive, unjustifiably disparate, or not warranted by the findings of fact issued by the sentencing court.

(A) Final Orders Final orders include orders for:

- (1) certification to adult court, whether the order is entered or stayed;
- (2) adjudication in delinquency proceedings;
- (3) disposition in delinquency proceedings;
- (4) determination, conviction or sentencing of an extended jurisdiction juvenile; and

- (5) an order, on the prosecuting authority'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.

(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 the filing of the 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.

Whether a filing fee is required shall be determined pursuant to Minnesota Rules of Civil Appellate Procedure 103.01 subd. 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 transcript of the proceedings and the transmission of the transcript and record to the court of appeals except as modified here:

- (1) Within ten days of filing the notice of appeal, appellant shall order the necessary transcript and notify the court reporter that the transcript is due on or before thirty (30) days from the filing of the notice of appeal.
- (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 Subd. 4 (B) of this rule.

(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 Statute § 260.171.

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 Subd. 3 of this rule, Minnesota Statute § 260.171 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 31.04. Appeal by Prosecuting Authority

Subd. 1 Scope of Appeal The prosecuting authority may appeal as of right from:

- (1) sentences or dispositions imposed or stayed in extended jurisdiction juvenile cases;
- (2) denial of a motion for certification or denial of a determination of extended jurisdiction juvenile; and
- (3) pretrial orders, including suppression orders.

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 inconsistent with statutory requirements, unreasonable, inappropriate, excessive, unjustifiably disparate, or not warranted by the findings of fact issued by the sentencing court.

Subd. 2 Attorney Fees The child shall be allowed reasonable attorney fees and costs incurred for appeal. The child's attorney fees and costs shall be paid by the

governmental unit which is responsible for prosecution of the case.

Subd. 3 Procedure for Appeals Prosecutorial appeals from final orders shall be governed by Minnesota Rules of Juvenile Procedure 31.03 subd. 2. All other prosecutorial appeals shall proceed as follows:

(A) Time for Appeal The prosecuting authority 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 order appealed from is served upon the prosecuting authority. An appeal by the prosecuting authority under this rule bars any further appeal by the prosecuting authority from any existing orders not included in the appeal. No appeal of a pretrial order by the prosecuting authority 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 31.03, subd. 2 (B) shall govern notice of appeal and filing of an appeal by the prosecuting authority except that the prosecuting authority 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 authority 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. 4 Stay Upon oral notice that the prosecuting authority intends to appeal a pretrial order, the trial court shall order a stay of the proceedings for five (5) days to allow time to perfect the appeal.

Subd. 5 Conditions of Release Upon appeal by the prosecuting authority of a pretrial order, the conditions for the child's release pending the appeal shall be governed by Minnesota Rules of Juvenile Procedure 18 or Minnesota Rules of Criminal Procedure 6.02, subs. 1, 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.

Subd. 6 Cross-Appeal by Child Upon appeal by the prosecuting authority, the child may obtain review of any pretrial order which will adversely affect the child by filing a notice of cross-appeal with the clerk of the appellate courts and the trial court administrator together with proof of service on the prosecuting authority. The notice of cross-appeal shall be filed within ten (10) days after service of notice of the appeal by the prosecuting authority. Failure to serve the notice does not deprive the court of appeals of jurisdiction over a child's cross-appeal but is ground for such action as the court of appeals deems appropriate, including dismissal of the cross-appeal.

RULE 31.05 Appeal by Parent(s) or Guardian of the Child

If the parent(s) or guardian participated separately pursuant to Minnesota Rules of Juvenile Procedure 3.03 subd. 2, they may appeal from a disposition, sentence or order for certification by the juvenile court.

Parents who are indigent may make application to the office of the state public defender.

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 parent(s) or guardian shall be governed by Minnesota Rules of Juvenile Procedure 31.03 subd. 2.

RULE 31.06 Certified Questions to the Court of Appeals

After adjudication or sentencing, or before hearing on a motion to dismiss, the trial court may report any question of law which is important and doubtful to the court of appeals, if the child requests or consents. Upon report of the question all further district court proceedings shall be stayed. Other cases pending in the trial court which involve or depend on the same question shall also be stayed if a stay is requested or consented to by the juvenile involved.

The aggrieved party shall file a brief with the court of appeals and serve it on all parties within fifteen (15) days of the trial court's report of the question. Other parties shall have eight (8) days to file responsive briefs. The court of appeals shall expedite its decision on certified questions.

Comment to Rule 31

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. 31.03, subd. 1 (A)(4) includes the right to appeal the execution of a

stayed sentence. See Minn. R. Cr. P. 27.04, subd. 3 (5) and 28.05, subd. (2).

A child's representation by the public defender is governed by Minn. Stat. Ch. 611. The public defender is not required to appeal from misdemeanor dispositions or adjudications, but may do so at its discretion.

The district court may order the parents or the child to contribute to some or all of the cost of representation. See Rule 4, subd. 5. See also Minn. Stat. § 260.251, subd. 4 (1992).

Minn. R. Juv. P. 31.03, subd. 2 (C)(1) refers to "necessary transcripts" because in some cases only a partial transcript will be required. Minnesota Rules of Civil Appellate Procedure Rule 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. For certification cases see Minn. R. Juv. P. 32.06, subd. 1 (A)(4). 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.

REPEAL EXISTING RULE 32 AND INSERT A NEW RULE AND COMMENTS AS FOLLOWS:

RULE 32 CERTIFICATION OF DELINQUENCY MATTERS

RULE 32.01 Initiation of Certification Proceedings of Delinquency Matters

Proceedings to certify delinquency matters pursuant to Minnesota Statutes § 260.125 may be initiated upon motion of the prosecuting authority 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 18 or 20; 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 Minnesota Rules of Juvenile Procedure 14.01, and shall include a statement of the grounds supporting the

certification. Within ten (10) days after the motion is made, the prosecuting authority 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.

RULE 32.02 Notice of Certification

Notice of the initial appearance under Minnesota Rules of Juvenile Procedure, 32.04 subd. 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 9.

RULE 32.03 Certification Study

Subd. 1 Order The court on its own motion or on the motion of the child's counsel or the prosecuting authority, may order social, psychiatric, or psychological studies concerning the child who is the subject of the certification proceeding.

Subd. 2 Costs Preparation costs and court appearance expenses for person(s) appointed by the court to conduct studies shall be paid at public expense.

Subd. 3 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 authority and the child's counsel forty-eight (48) hours prior to the time scheduled for the hearing. The reports shall otherwise be confidential.

Subd. 4 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 in any subsequent trial.

RULE 32.04 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. 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 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 authority 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 18.

(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), guardian 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 authority are entitled to discovery pursuant to Minnesota Rules of Juvenile Procedure 24.

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 32.04, subd. 4; and a pre-hearing conference if requested, and
- (F)** order studies pursuant to Minnesota Rules of Juvenile Procedure 32.03, 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 32.05, subd. 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 authority 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 authority 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 authority 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 authority 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 authority 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 authority 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 authority 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 authority may offer evidence in rebuttal of the defense evidence, and the child's counsel may then offer evidence in rebuttal of the prosecuting authority'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 authority 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 32.05, subd. 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 32.05, subd. 2, the prosecuting authority shall have the burden to prove by clear and convincing evidence that retaining the proceeding in juvenile court does not serve public safety.

RULE 32.05 Certification Determination

Subd. 1 Presumption of Certification Pursuant to Minnesota Statutes § 260.125, subd. 2a. (1994), it is presumed that a child will be certified to district court if:

- (A) the child was 16 or 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 32.04 subd. 3.

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

Subd. 2 Non-presumptive certification If there is no presumption of certification as defined by subdivision 1, the court may order certification only if the prosecuting authority has demonstrated by clear and convincing evidence that retaining the proceeding in juvenile court does not serve public safety.

Subd. 3 Public Safety In determining whether the public safety is served by certifying a child to district court, or in designating the proceeding an extended jurisdiction juvenile proceeding, the court shall consider 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, and the impact on any 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.

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.

Subd. 5 Extended Juvenile Court Jurisdiction

(A) Presumptive certification If the juvenile court does not order certification in a 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 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 authority 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 32.05, subd. 3. Absent this showing the case shall proceed as a regular delinquency proceeding in juvenile court.

RULE 32.06 Order

Subd. 1 Decision, Timing, Content of Order Within fifteen (15) days of the hearing the court shall enter an order with written findings of fact and conclusions of law.

(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 specified in the certification order;
- (2) a finding of probable cause in accordance with Minnesota Rules of Juvenile Procedure 32.04, subd. 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 32.05, subd. 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 32.05, subd. 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 32.07) without unnecessary delay, and in any event, not more than 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 If the court decides not to order certification to district court for prosecution, the order shall state why certification was not ordered.

(C) Retention of Jurisdiction by Juvenile Court as an Extended Jurisdiction Juvenile

- (1) If the court does not order certification in a case where the presumption of certification applies, the court shall designate the proceeding an extended jurisdiction juvenile case. The order shall state why certification is not ordered with specific reference to why retention serves public safety under the factors listed in Minnesota Rules of Juvenile Procedure 32.05, subd. 3.
- (2) If the court does not order certification in a case where the presumption of certification does not apply, the court may designate the proceeding an extended jurisdiction juvenile case pursuant to Minnesota Rules of Juvenile Procedure 32.05, subd.5(B). The order shall state why certification was not ordered and why the proceeding was designated extended jurisdiction juvenile.

If the court designates the case as an extended jurisdiction juvenile proceeding the case shall proceed pursuant to Minnesota Rules of Juvenile Procedure 32A.07.

(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. 4(B).

Subd. 2 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 18.

Subd. 3 Presiding Judge The judge who presides over a contested certification hearing shall not preside over a court trial of the same offense, unless otherwise agreed by the child and prosecuting authority.

Subd. 4 Final Order This order shall constitute a final order.

RULE 32.07 Termination of Jurisdiction Upon Certification

Subd. 1 Child Not in Detention Once the court enters an order certifying a proceeding to the district court, the jurisdiction of the juvenile court terminates immediately over a child who is not then detained in custody. All subsequent steps in the case are governed by the Minnesota Rules of Criminal Procedure.

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 authority 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 32.06 subd. 1(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) days or before if the prosecuting authority 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 subdivision 1 and 2, certification and the termination of juvenile court jurisdiction may be stayed as provided in Minnesota Rules of Juvenile Procedure 31.03, subd. 3.

RULE 32.08 First Degree Murder Accusation.

Subd. 1 Child ages 16 or 17 Upon the filing of a complaint or indictment charging a 16 or 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 16 committed the offense of murder in the first degree, the prosecuting authority shall present the case to the grand jury for consideration of an indictment under Minnesota Statutes ch. 628 within 14 days after the petition is filed.

Comment to Rule 32

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.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), 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 and 628.26. 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 Welfare of A.N.J., ... N.W.2d ..., No. C4-94-691 (Minn. App. Sept. 27, 1994) (Juvenile court retains jurisdiction to hear a reference 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 Minnesota Rules of Juvenile Procedure 32.01 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 Minnesota Rules of Juvenile Procedure 32.04 subd. 1 (A) is taken from Minnesota Statutes § 260.155 (1994).

The sanction for delay in Minnesota Rules of Juvenile Procedure 32.04, subd. 1 (B) and 32.06, subd. 2 is modeled after Minn. R. Cr. P. 11.10. See In re Welfare of J.J.H., 446 N.W.2d 680, 681-82 (Minn.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. Cr. P. 11.10 speedy trial rule).

On continuation questions under Minnesota Rules of Juvenile Procedure 32.04, 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 Minnesota Rules of Juvenile Procedure 32.04, subd. 1 (C) is taken from the 1983 version of Minnesota Rules of Juvenile Procedure 15.03.

Minn. R. Juv. P. 32.04, subd. 2 (B) requires a determination on appearances of necessary persons. Under Minn. Stat. § 260.155, subd. 4b. (1994) 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).

Much of the content of Minn. R. Juv. P. 32.04, subd. 3 is modeled after Minn. R. Cr. 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. Cr. P. 11.03. Also note In re Welfare of E.Y.W., 496 N.W.2d 847, 850 (Minn.App. 1993) (juvenile not entitled to exclusionary hearing before decision on probable cause).

Minn. R. Juv. P. 32.04, subd. 3 and 32.06, subd. 1 (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).

Minn. R. Juv. P. 32.04, 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. 32.04 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.App. 1985). Cf. Harris v. New York, 401 U.S. 222 (1971).

Following presentation of evidence by the party with the burden of proof under Minn. R. Juv. P. 32.04, 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. 32.05, subd. 1 (A) whether an offense would result in a presumptive commitment to prison under the Minnesota Sentencing Guidelines should be analyzed pursuant to those guidelines.

Under Minn. Stat. §§ 260.111, subd. 1a., 260.015, subd. 5(b) and 260.125, subd. 7 (1994), 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. Cr. P. 17.01, first degree murder cases are prosecuted by an indictment, but the proceedings can begin by complaint. As a result, the prosecuting authority can initiate a first degree murder accusation in adult court proceedings.

Minn. R. Juv. P. 32.08, subd. 2 repeats the procedural requirement stated in Minn. Stat. § 260.125, subd. 6 (1994).

RULE 32A EXTENDED JURISDICTION JUVENILE PROCEEDINGS AND PROSECUTION

Amend the rules by adding a new Rule 32A and comments as follows:

RULE 32A EXTENDED JURISDICTION JUVENILE PROCEEDINGS AND PROSECUTION

RULE 32A.01 Initiation of Extended Jurisdiction Juvenile Proceedings

Subd. 1 Authority Extended jurisdiction juvenile proceedings are initiated pursuant to Minnesota Statutes § 260.126 and Minnesota Rules of Juvenile Procedure 32A. Jurisdiction of the juvenile court may continue until the child's twenty first (21st) birthday.

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 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.

(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.

Subd. 3 Designation by Prosecuting Authority The court shall commence an extended jurisdiction juvenile proceeding when a delinquency petition filed pursuant to

Minnesota Rules of Juvenile Procedure 19:

(A) alleges a felony offense committed after the child's sixteenth 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 authority designates on the petition that the case should be an extended jurisdiction juvenile prosecution.

This designation may be withdrawn by the prosecuting authority any time before jeopardy attaches.

Subd. 4 Motion by Prosecuting Authority The prosecuting authority may make a written motion pursuant to Minnesota Rules of Juvenile Procedure 14.01 to have the court commence an extended jurisdiction juvenile proceeding when a delinquency petition has been filed pursuant to Minnesota Rules of Juvenile Procedure 19 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 18 and 20 or before jeopardy attaches, whichever of the later two occurs first.

RULE 32A.02 Notice of the Extended Jurisdiction Juvenile Proceeding

A notice of the initial appearance under Minnesota Rules of Juvenile Procedure 32A.04, subd. 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 9.

RULE 32A.03 Extended Jurisdiction Juvenile Study

Subd. 1 Order The court on its own motion or on the motion of the child's counsel or the prosecuting authority, may order social, psychiatric, or psychological studies concerning the child who is the subject of the extended jurisdiction juvenile proceeding.

Subd. 2 Costs Preparation costs and court appearance expenses for the person(s) appointed by the court to conduct studies shall be paid at public expense.

Subd. 3 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 authority and the child's counsel forty-eight (48) hours prior to the time scheduled for the hearing. The report shall otherwise be confidential.

Subd. 4 Admissibility of Study 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 in any subsequent trial.

RULE 32A.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. 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 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 extended jurisdiction juvenile proceeding hearing 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 authority 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 the 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 18.

(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), guardian 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 authority are entitled to discovery pursuant to Minnesota Rules of Juvenile Procedure 24.

Subd. 2 Initial Appearance in Extended Jurisdiction Juvenile Proceeding At the initial appearance, 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 persons 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 hearing required by Minnesota Rules of Juvenile Procedure 32A.04, subd. 4; and a pre-hearing conference if requested, and
- (F) order studies pursuant to Minnesota Rules of Juvenile Procedure 32A.03, 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 the filing of the petition designating an extended jurisdictional juvenile prosecution or the filing of the extended jurisdictional juvenile proceedings motion. The court may, on the record, extend this time for good cause.

(B) 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.

(C) Designation Probable Cause If the prosecuting authority has designated the proceeding an extended jurisdiction juvenile prosecution 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 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 32A.07.

(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 Extended Jurisdiction Juvenile Hearing

(A) Hearing Rights The child's counsel and the prosecuting authority 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 authority 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 authority 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 authority may offer evidence in rebuttal of the defense evidence, and the child's counsel may then offer evidence in response to the prosecuting authority'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 authority may make a closing argument.
- (7) The child's counsel may make a closing argument.

(D) Burdens of Proof The prosecuting authority 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 32A.05.

RULE 32A.05 Extended Jurisdiction Juvenile Prosecution Determination

The court may order a case to proceed as an extended jurisdiction juvenile prosecution if the public safety would be served, taking 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 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;
- (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.

32A.06 Order

Subd. 1 Decision, Timing, Content of 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 20.

Subd. 2 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 18.

Subd. 3 Presiding Judge The judge who presides over a contested extended jurisdiction juvenile hearings shall not preside over a court trial in a subsequent adjudicatory proceeding regarding this offense, unless otherwise agreed by the child and the prosecuting authority.

Subd. 4 Final Order This order shall constitute a final order.

RULE 32A.07 Extended Jurisdiction Juvenile Prosecution

Every child subject to extended jurisdiction juvenile prosecution is entitled to trial by jury pursuant to Minnesota Rules of Criminal Procedure 26. The trial shall be scheduled pursuant to Minnesota Rules of Juvenile Procedure 27.02, except the time shall run from the

date of the filing of the extended jurisdictional juvenile order. The court shall schedule a Rasmussen Hearing prior to the trial.

RULE 32A.08 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; and
- (B) impose an adult criminal sentence under Minnesota Law, except that the court shall stay execution of that sentence on the condition that the child shall not violate the provisions of the disposition ordered in subd. 1(A) above and not 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 32A.09, 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.

Subd. 3 Limitation on Certain Extended Jurisdiction Juvenile Dispositions

If an extended jurisdiction juvenile prosecution, initiated by designation by the prosecuting authority, 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. If the child has plead guilty and consents, the court may also impose a stayed adult criminal sentence under Minnesota Rules of Juvenile Procedure 32A.08, subd. 1.

RULE 32A.09 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 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. If the probationer fails to appear in response to a summons, a warrant may be issued.

(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 was 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 the 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 revocation 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 authority 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;
- (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 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 18 and Minnesota Rules of Criminal Procedure 6.02, subds. 1,2. 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 32A.09, subd. 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 § 609.14, subd. 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 authority 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.

Comment to Rule 32A

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. 32A.04, subd. 1(B) and 32A.06, subd. 2 is modeled after Minn. R. Cr. P. 11.10. See In re Welfare of J.J. H., 446 N.W.2d 680, 681-82 (Minn. 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. Cr. P. 11.10 speedy trial rule).

Most of the waiver language in Minn. R. Juv. P. 32A.04 subd. 1(C) is taken from the 1983 version of Minn. R. Juv. P. 15.03.

Minn. R. Juv. P. 32A.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. App. 1985), cf. Harris v. New York, 401 U.S. 222 (1971).

On continuation questions under Minn. R. Juv. P. 32A.04, subd. 1(B), the victim should have input but does not have the right of a party to appear and object.

Much of the content of Minn. R. Juv. P. 32A.04, subd. 3 is modeled after Minn. R. Cr. 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 Minnesota Rules of Criminal Procedure 11.03. Also note, In re Welfare of E.Y.W., 496 N.W.2d 847, 850 (Minn. App. 1993) (juvenile not entitled to exclusionary hearing before decision on probable cause).

Minn. R. Juv. P. 32A.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 Minnesota Statutes § 260.015, subd. 5 (1994).

Minn. R. Cr. P. 32A.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.

Following the presentation of evidence by the prosecuting authority, 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) 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).

Pursuant to Minn. Stat. § 260.215 (1994), 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 Minnesota Rules of Criminal Procedure 27, and Minn. Stat. §§ 609.115 and 631.20. The court shall send a copy of this worksheet to the Minnesota Sentencing Guidelines Commission pursuant to Minnesota Rules of Criminal Procedure 27.03, subd. 4(c).

JUVENILE FORMS

Introductory Statement

Form

1. Waiver of Right to Counsel

INTRODUCTORY STATEMENT

The following form is intended for illustration only. No attempt is made to furnish a complete manual of forms.

FORM 1. APPLICATION TO GIVE UP MY RIGHT TO A LAWYER AND REPRESENT MYSELF

COUNTY _____

JUDICIAL DISTRICT _____

**APPLICATION TO GIVE UP
MY RIGHT TO A LAWYER
AND REPRESENT MYSELF**

In the matter of the welfare of _____.

My name is _____.

I am _____ years of age. My birthday is _____, 19 _____.
(month) (date) (year)

I am in (completed) the _____ grade of school at _____.
(school)

I have a copy of the petition (the papers saying that I am delinquent). I have read the papers (OR: I cannot read, but my lawyer read the papers to me).

I have met privately with a lawyer _____.
(name of lawyer)

We talked about how a lawyer can help me when I am in court. We talked about what problems I might have if I go to court without a lawyer.

I understand that:

1. I have a right to have a lawyer represent me and be with me every time I come to court.
2. If I cannot pay for a lawyer, the court can appoint a lawyer for me anyway.
3. If my parents cannot pay for a lawyer, the court can give me a lawyer anyway.
4. The court may give me a lawyer without charge or with a reduced charge to me and my parent(s).
5. Even if my parent(s) can pay for a lawyer, if I don't have a lawyer, then the court can give me a lawyer anyway.

My parent(s), (guardian), _____, is here in court. I have talked with
[Name(s)]

(him/her/them) about my decision to give up my right to a lawyer.

I understand that:

1. I am charged with the following crime(s):

_____ on or about _____, 19__ in
(offense) (date)

_____ County.
(place)

_____ on or about _____, 19__ in
(offense) (date)

_____ County.
(place)

2. If I were charged with this (these) crime(s) as an adult, it would be a (felony) (gross misdemeanor) (misdemeanor) offense.

3. The charges also include these other types of offense(s):

4. Possible defenses to all of these charges include:

5. I have a right to a trial. I have talked about my trial rights with my lawyer.

6. If I admit that I did this, or if I have a trial and the judge finds me guilty, then the judge can impose the following sentences:

Out-of-Home Placement

Supervised Probation

Fines

Or Other Conditions of Probation

Commitment to Commissioner of Corrections

Community Work Service

Counseling

7. If I admit that I did this, or if I have a trial and the judge finds me guilty, and I come back to juvenile court again for some other offense, I may have a more severe punishment at that time.

8. If I am found to have committed these offenses or admit to them, it will be part of my record and could affect my sentence if I am ever convicted of a crime as an adult.

I have read these two pages and understand my rights.

Dated: _____, 19__ .

(Juvenile)

(Parent or Guardian)

(Parent or Guardian)