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FINAL REPORT

**MINNESOTA SUPREME COURT ADVISORY COMMITTEE ON THE
MINNESOTA RULES OF JUVENILE PROCEDURE**

C6-84-2165

December 5, 1995

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STATE OF MINNESOTA
DISTRICT COURT, FIRST JUDICIAL DISTRICT

December 4, 1995

Dear Chief Justice Keith,

Enclosed I am submitting to the Supreme Court a draft of my committee's rules of procedure for juvenile court.

As Chair of the Supreme Court Committee on Juvenile Rules, I wish to publicly thank and acknowledge the work of the following individuals. First, my committee as a whole has spent many hours reading drafts, offering suggestions for revisions, participating in phone conferences and meetings. Their perspectives, experience and insights were invaluable in arriving at consensus regarding our proposed rules. Each member of the committee made a contribution by their presence and work. Our two reporters, Professor Barry Feld and Judge Gary Crippen, deserve special recognition and thanks for their able drafting and scholarly expertise.

The committee is also grateful to Charlanne Winking, Susan Maki, and Peter Gorman for their helpful suggestions regarding Rule 21, governing appeals. The committee has also been ably assisted by Janet Marshall and staff.

Last, I wish to express my personal gratitude to several capable law clerks who each spent many hours making countless revisions in our quest for perfection; Sherri Miller-DeWalt, Wendy Battias, Minkyoo Lee, and David Flotten were invaluable to our work. Most of all, I wish to thank Tonja Rolfson for her tireless efforts in bringing this project to completion. Words cannot express the importance of her attention to detail and her commitment to following this project through to completion.

Sincerely,

A handwritten signature in cursive script, appearing to read "Leslie M. Metzen".

Leslie M. Metzen

INTRODUCTION

The Minnesota Supreme Court Advisory Committee on the Minnesota Rules of Juvenile Procedure ("the Committee") was convened in April, 1994. The first task of the Committee was to devise interim rules to implement statutory changes effective January 1, 1995 in the areas of certification and extended jurisdiction juvenile proceedings and prosecutions (*Present Rules 32 and 32A; Minn. Stat. §§ 260.125 and 260.126 (1994)*). As part of that task, the Committee also revised the rule on appeals (*Present Rule 31*) to encompass appeals of orders entered under the new certification and extended jurisdiction juvenile procedure as well as to deal with some common problems of juvenile appeals. Additionally, the Committee revised the rule on right to counsel (*Present Rule 4*) to make it clear that all children alleged to be delinquent because of a felony, gross misdemeanor or misdemeanor offense have a right to counsel appointed at public expense.

After the interim rules were adopted and made effective January 1, 1995, the Committee focused its efforts on revision of the Minnesota Rules of Juvenile Procedure 1 through 36 as a whole. The Committee operated with the following goals in mind:

- To ensure adequate due process protections for children brought under juvenile court jurisdiction;
- To make the rules easy-to-follow and devoid of legalese;
- To make the rules conform to common practice where that practice is working efficiently; and
- To fill gaps not covered by the present Rules.

A. To Ensure Adequate Due Process Protections For Children Brought Under Juvenile Court Jurisdiction.

An overarching theme of every discussion, but especially the Committee's discussions of right to counsel and timing decisions, was the protection of a child's right to due process.

B. To Make the Rules Easy-to-Follow and Devoid of Legalese

This Committee decided early on to eliminate language which was merely euphemistic or circuitous. For that reason, these proposed rules refer to "pleading guilty or not guilty" instead of "admitting or denying the allegations of the petition." However, where the euphemisms were specifically legislated, they were preserved. For example, "warrant for immediate custody" did not become "warrant for arrest" because of Minn. Stat. § 260.165, subd. 2 (1994) ("The taking of a child into custody under the provisions of this section shall not be considered an arrest.")

C. To Make the Rules Conform to Common Practice Where that Practice is Working Efficiently

This was especially true with regard to the proposed rules dealing with the charging document (petition, tab charge or citation)(*Proposed Rule 6*) and notice (*Proposed Rule 25*). Present Rule 19 does not recognize commonly used charging documents such as tab charges and citations. Proposed Rule 6 does.

As to notice, the reality throughout the state is that no one personally serves all notices of juvenile court appearances as is required by present Rule 9 and Minn. Stat. § 260.141, subd. 2 (1994). The costs would be astronomical. Proposed Rule 25 recognizes the common practice of mailing out a "notice in lieu of summons" to a person entitled to notice of a hearing, but requiring personal service before the court may issue a warrant for nonappearance.

D. To Fill Gaps Not Covered by the Present Rules.

The proposed rules now contain a rule dealing with the substitution of a judge including procedures for filing a notice to remove (*Proposed Rule 22*). Proposed Rule 20 fills the gap left by present Rule 33 by indicating what action the court should take once a child is found to be incompetent to proceed. In addition, Proposed Rule 20 provides children the same right as adults to use the defense of mental illness or mental deficiency. Proposed Rule 14 codifies the procedure for continuance for dismissal. "Continuance without Adjudication" (or as it is commonly called, "withholding adjudication") is often mistaken for continuance for dismissal with serious hidden consequences. The discussion of Proposed Rules 14 and 15 explains the danger of this misunderstanding. A provision regarding joint trials was added to the rule on trials, (*Proposed Rule 13.07*), and an advisory and procedure regarding dual representation, non-existent in the present rules, was added to the rule on right to counsel. (*Proposed Rule 3.03*).

The Committee reached consensus on the proposed rules as submitted. The following summary may be helpful in reviewing this lengthy document to highlight the areas of significant changes and make you aware of the topics which received the most debate in the Committee.

ORGANIZATION OF PROPOSED RULES OF JUVENILE PROCEDURE

The organization of the present rules has been modified in the proposed rules in the following ways:

- 1) to reflect the order in which a case will progress through the juvenile court system;
- 2) to group together special proceedings such as certification, extended jurisdiction juvenile, appeals and proceedings to determine whether the child is incompetent; and
- 3) to group together at the end rules governing administrative functions of the court.

The organization is detailed below. The present rules which form the basis of the proposed rule are preceded by a bullet ("•"):

I. SCOPE, APPLICATION AND GENERAL PURPOSE

1. Scope, Application and General Purpose
 - Present Rule 1 ("Scope, Application and General Purpose and Construction")

II. CONSTITUTIONAL GUARANTEES AND PRIVACY SAFEGUARDS

2. Attendance at Hearings and Privacy
 - Present Rule 3 ("Right to Participate")
 - Present Rule 7 ("Presence at Hearings")
 - Present Rule 8 ("Privacy")
3. Right to Counsel
 - Present Rule 4 ("Right to Counsel")

III. CUSTODY AND PRE-TRIAL RELEASE

4. Warrants
 - Present Rule 16 ("Immediate Custody")
5. Detention
 - Present Rule 18 ("Detention")

IV. JUVENILE DELINQUENCY PROCEDURE

6. Charging Document
 - Present Rule 19 ("Petition")
7. Arraignment
 - Present Rule 20 ("Arraignment")
8. Pleas
 - Present Rule 21 ("Admission or Denial")
9. Settlement Discussions and Plea Agreements
 - Present Rule 22 ("Settlement Discussions")
10. Discovery
 - Present Rule 23 ("Advisory by County Attorney of Evidence, Identification Procedure and Additional Offenses")
 - Present Rule 24 ("Discovery")

11. Pretrial Conference
 - Present Rule 25 ("Pretrial Conference")
12. Omnibus Hearing
 - Present Rule 26 ("Evidentiary Hearing")
13. Trials
 - Present Rule 27 ("Trials")
14. Continuance for Dismissal
15. Delinquency Disposition
 - Present Rule 29 ("Adjudication")
 - Present Rule 30 ("Disposition")
16. Post-trial Motions
 - Present Rule 28 ("Motion for New Trial")

V. JUVENILE PETTY OFFENDER AND JUVENILE TRAFFIC OFFENDER PROCEDURE

17. Juvenile Petty Offender and Juvenile Traffic Offender Procedure
 - Present Rule 36 ("Juvenile Traffic Offender")

VI. SPECIAL JUVENILE PROCEEDINGS: CERTIFICATION, EXTENDED JURISDICTION JUVENILE, CHILD INCOMPETENT TO PROCEED AND DEFENSE OF MENTAL ILLNESS OR MENTAL DEFICIENCY, AND APPEALS

18. Certification of Delinquency Matters
 - Present Rule 32 ("Certification of Delinquency Matters")
19. Extended Jurisdiction Juvenile Proceedings and Prosecution
 - Present Rule 32A ("Extended Jurisdiction Juvenile Proceedings and Prosecution")
20. Child Incompetent to Proceed and Defense of Mental Illness or Mental Deficiency
 - Present Rule 33 ("Proceedings When Child is Believed to Be Mentally Ill or Mentally Deficient")
21. Appeals
 - Present Rule 31 ("Appeals")

VII. GENERAL

22. Substitution of Judge
23. Referee
 - Present Rule 2 ("Referee")
24. Guardian Ad Litem
 - Present Rule 5 ("Guardian Ad Litem")
25. Notice
 - Present Rule 9 ("Notice")
26. Subpoenas
 - Present Rule 13 ("Subpoenas")
27. Motions
 - Present Rule 14 ("Motions")
28. Copies of Orders
 - Present Rule 10 ("Copies of Orders")
29. Recording
 - Present Rule 11 ("Recording")
30. Records
 - Present Rule 34 ("Records")
31. Timing
 - Present Rule 35 ("Timing")
 - Present Rule 65 ("Timing")

Three rules--present Rules 6 ("Right to Remain Silent"), Rule 12 ("Continuances and Advancements"), 15 ("Waiver of Counsel and Other Constitutional Rights") and 17 ("Intake")--were deleted entirely in the proposed rules either because their content was obvious and unneeded or because their content was already inherently part of another rule or rules.

SUMMARY OF THE PROPOSED RULES

PROPOSED RULE 1. SCOPE, APPLICATION AND GENERAL PURPOSE

AND

PROPOSED RULE 37.01. SCOPE, APPLICATION, GENERAL PURPOSE AND CONSTRUCTION

The present delinquency rules contain references to truants and runaways. Those references have been deleted from the proposed rules because truant and runaways are, by definition, Children in Need of Protection or Services ("CHIPS") matters. (*Minn. Stat. § 260.015, subd. 2a(11) and (12)*). Additionally, despite their reference in the present rules of delinquency procedure, truants and runaways have been treated procedurally as CHIPS in common practice. Proposed Rules 1 and 37.01 reflect these amendments in their statements of scope and application.

PROPOSED RULE 2. ATTENDANCE AT HEARINGS AND PRIVACY

Proposed Rule 2 combines present Rules 3 ("Right to Participate"), 7 ("Presence at Hearings"), and 8 ("Privacy") into one rule to address who may attend a hearing, who may be excluded from a hearing and who can participate in the hearing.

Existing Rules 8 ("Privacy") and 7.01 ("Right to Attend Hearing") are now Proposed Rule 2.01 ("Right to Attend Hearing"). Present Rule 7.02 ("Presence of Child") is incorporated into Proposed Rule 2.03 ("Presence Required"). Present Rule 3 ("Right to Participate") is now Proposed Rule 2.04 ("Right to Participate").

Present Rule 7.03 ("Exclusion of Other Persons Who Have Right to Attend Hearings") is incorporated into Proposed Rule 2.02 ("Exclusion of Persons Who Have a Right to Attend Hearings"). Proposed Rule 2.02 is more expansive than present Rule 7.03 in that it allows exclusion of the child from a hearing in the best interest of the child as long as that child is represented by counsel who remains at the hearing. This is to protect children from the psychological and emotional damage which can result from hearing particularly bleak psychological, social or psychiatric assessments of themselves.

Proposed Rule 2.05 is new. It tightens up the conduct restrictions of participants in juvenile court by prohibiting ex-parte communication. As the sanctions for delinquent acts become more severe, due process safeguards become more imperative.

PROPOSED RULE 3. RIGHT TO COUNSEL

Except for two major modifications, the proposed rule is largely the same as the present Rule 4 ("Right to Counsel") which was approved by the Minnesota Supreme Court on an interim basis effective January 1, 1995. First, in order to comply with Minnesota Statutes § 260.195, subd. 2a (Supp. 1995), Proposed Rule 3.02, subd. 5 provides that juvenile petty offenders and juvenile traffic offenders do not have a right to counsel appointed at public expense except

- where out-of-home placement is proposed as a disposition;
- at a detention hearing;
- at a hearing to determine whether the child is competent to proceed;
- where a child charged with a misdemeanor is designated a juvenile petty offender by the prosecuting attorney as set forth in Proposed Rule 17.01, subd. 1(B); and
- for the purposes of appeal in the discretion of the Office of the State Public Defender.

Although Minnesota Statutes § 260.195, subd. 2a (Supp. 1995) prohibits counsel at public expense for juvenile petty offenders, the Committee concluded that due process requires that every child have counsel when out-of-home placement is a possibility (as it is for juvenile petty offenders under Minnesota Statutes § 260.195, subd. 4 for a child appearing on a third or subsequent juvenile alcohol or controlled substance offense) and at detention hearings because physical liberty interests are at stake there as well. Because of the nature of incompetency proceedings, the Committee concluded that every child, including juvenile petty and traffic offenders, should have counsel appointed at public expense for these proceedings. Admittedly, incompetency proceedings will rarely occur in juvenile petty and juvenile traffic offender cases because the prosecutor will likely move to dismiss the case rather than bother with the procedure for determining competency. The Committee also decided that the juvenile petty and traffic offenders deserve counsel appointed at public expense under the same circumstances as an adult would receive appointed counsel--where an adult charged with a misdemeanor is designated an adult petty offender.

Second, the Committee added a provision regarding dual representation which does not appear in the present rules. The language of this provision is based upon Minn.R.Crim.P. 17.03, subd. 5. (*Proposed Rule 3.03*).

PROPOSED RULE 4. WARRANTS

The text of this rule is largely the same as present Rule 16 ("Immediate Custody"). One

major change is that no warrant may issue without probable cause. Present Rule 16.01, subd. 2 allows a warrant to issue without probable cause if the child has left the custody of the detaining authority without the permission of the court, violated a court order or violated the terms of probation. The Committee sees this provision as possibly leading to abuse. Requiring probable cause for all warrants meshes with the new requirement of a probable cause hearing within 48 hours after the child is taken into custody without a warrant and detained which is now embodied in Proposed Rule 5.04, subd. 4 of the Detention rule.

Existing Rule 16 was further amended by limiting the court's power to issue a warrant for a juvenile petty and juvenile traffic offender to reasons based on failure to appear. The Juvenile Rules Committee reasoned that because these children can not be placed out of the home and are not entitled to counsel appointed at public expense, they should not be placed in detention for any reason other than failure to appear. The Committee recognizes that one result of this rule is that the police may now take such children into custody pursuant to Minnesota Statutes § 260.165 for more reasons than the court is allowed to issue warrants for them. However, this Committee is not proposing that the Supreme Court change that legislatively mandated power of the police. The Court can, however, set forth rules governing the approval of detention of such children (Proposed Rule 5) and the conditions under which the court can issue warrants for them (Proposed Rule 4).

Present Rule 16 was also amended by incorporating the same limitations set out in Minnesota Rules of Criminal Procedure 3.03, subd. 3 regarding the circumscription of the time of day a child alleged to have committed a misdemeanor, juvenile petty or juvenile traffic offense can be taken into custody pursuant to a warrant.

PROPOSED RULE 5. DETENTION

Proposed Rule 5 replaces existing Rule 18 ("Detention"). The Minnesota Supreme Court Advisory Task Force on the Juvenile Justice System recommended that "[t]he Minnesota Supreme Court, through the Advisory Committee on the Rules of Juvenile Procedure, should develop rules on detention criteria for juveniles consistent with existing law, and modify The Rules of Juvenile Procedure to permit the challenge of juvenile detention decisions based on the statutory criteria and the Rules." (*Minnesota Supreme Court Advisory Task Force on the Juvenile Justice System, 66 (1994)*). Proposed Rule 5 is the product of much Committee debate that attempts to fulfill that recommendation. Using essentially the same framework as present Rule 18 ("Detention"), Proposed Rule 5 inserts into that structure a formula utilizing a presumption for unconditional release and objective, non-exclusive factors which may justify detention. (Proposed Rule 5.03). This formula is to be used every time any detaining authority (as defined in Proposed Rule 5.02, subd. 2) makes a detention decision and provides standards for assessing the reasonableness of that decision.

Proposed Rule 5.04, subd. 4 sets forth the "48-hour" rule for probable cause determinations which was absent in existing Rule 18.

PROPOSED RULE 6. CHARGING DOCUMENT

Proposed Rule 6 replaces present Rule 19 ("Petition"). In common practice, many misdemeanor, petty and traffic offenses are being charged by "tickets," (i.e., tab charges or citations) rather than by petition. These "tickets" serve as petition equivalents in practice and save prosecuting attorneys the work of drafting petitions for relatively minor offenses. The present Rule 19 does not recognize the use of these alternative charging documents. Proposed Rule 6 does and retains the ability of the prosecuting attorney to charge any offense by petition if the prosecutor so desires.

The Minnesota Supreme Court Advisory Task Force on the Juvenile Justice System recommended that "[t]he Minnesota Supreme Court, through the Advisory Committee on the Rules of Juvenile Procedure, should consider whether district court judges should be able to convert a delinquency matter to a CHIPS matter for disposition purposes, in that the delinquent behavior may be more appropriately dealt with by a CHIPS disposition." (*Minnesota Supreme Court Advisory Task Force on the Juvenile Justice System, 66 (1994)*). The Committee did not discuss this recommendation directly and discussed the Proposed Rule 6.04, subd. 2 regarding prohibition of amendment of a charging document only briefly, accepting the prohibitions currently embodied in present Rule 19. Taken on its face, the Task Force recommendation asks this Committee to develop rules to expand dispositional options for delinquents, a task which may be better suited for the legislature. Further, the court already has the authority to refer a case for a CHIPS assessment which is a better practice than to allow a court, sua sponte, to convert a delinquency petition to a CHIPS petition.

PROPOSED RULE 7. ARRAIGNMENT

Although in other respects similar to present Rule 20 ("Arraignment"), Proposed Rule 7 increases the time allowed before a child in custody must be arraigned and provides specifically for continuance of an arraignment. Under present Rule 20.02, subd. 1, a child in custody may be arraigned at the detention hearing and shall be arraigned within five (5) days of being taken into custody. Proposed Rule 7.03, subd. 1 provides that a child may be arraigned at the detention hearing and shall be arraigned no later than five (5) days after the detention hearing. The court may continue an arraignment, after considering the wishes of the parties to proceed later or at once without requiring that the child plead guilty or not guilty to the charges. (*Proposed Rule 7.04, subd. 4*).

Both prosecutors and public defenders on the Committee agreed to this extension of the time for arraignment for one main reason: to give public defenders and prosecutors time to prepare. The extension is necessary from a public defender's point of view because often, the public defender representing the child at a detention hearing will not be the public defender representing the child at the arraignment and the extension of what, at most would be 36 hours (*See Proposed Rule 5.04*), was seen as a small sacrifice of the child's liberty interest in order to ensure effective representation. Additionally, the prosecutors wanted extra time to make an informed and careful decision about whether to bring a motion for certification or for extended jurisdiction juvenile. Public defenders and the Committee as a whole agreed children would

benefit from allowing prosecutors more time to assess whether a certification or extended jurisdiction juvenile motion was necessary as this would reduce motions hastily made to preserve prosecution options.

PROPOSED RULE 8. PLEAS

Proposed Rule 8 replaces present Rule 21 ("Admission or Denial"). It applies only to pleas in delinquency proceedings. Juvenile petty and traffic offender pleas are handled in Proposed Rule 17. (*Proposed Rule 8.01; Proposed Rule 17.08*). Extended jurisdiction juvenile guilty pleas are governed by Minnesota Rules of Criminal Procedure 15. (*Proposed Rule 8.01; Proposed Rule 19.08*).

The most notable change is that Proposed Rule 8 eliminates the euphemism "admit or deny" and uses "plead guilty or not guilty" as is used in adult criminal proceedings. Additionally, the rule amplifies the explanation of the consequences of pleading guilty from a dispositional standpoint and requires that the child understand what the future consequences of such a plea will be on sentencing (if the child commits an offense as an adult) and what the consequences may be with regard to the prospects for certification or prosecution as an extended jurisdiction juvenile (if the child commits another offense as a juvenile). (*Proposed Rule 8.04, subd. 1(C)*). In other respects, except for simplification and reorganization of language, Proposed Rule 8 contains the substance of present Rule 21.

PROPOSED RULE 9. SETTLEMENT DISCUSSIONS AND PLEA AGREEMENTS

Except for simplification of language, Proposed Rule 9 remains the same as present Rule 22 ("Settlement Discussions"). One major change was the deletion of the substance of present Rule 22.05 which prohibits settlement agreements from containing recommendations regarding disposition unless permitted by court rule. It is difficult to imagine the purpose of a settlement agreement that did not contain recommendations regarding disposition. In common practice, every settlement agreement contains such recommendations. The court retains discretion to adopt or reject the recommended disposition.

PROPOSED RULE 10. DISCOVERY

Proposed Rule 10 incorporates present Rules 23 ("Advisory by County Attorney of Evidence, Identification Procedure and Additional Offenses") and 24 ("Discovery"). It is modeled after and essentially follows the adult criminal discovery rule, Minnesota Rule of Criminal Procedure 9, except that it is modified and simplified to accommodate practice in juvenile court. The taking of depositions is covered by Proposed Rule 10 as it is in present Rule 24. However, the use of such depositions at trial has been moved to Proposed Rule 13 ("Trials").

PROPOSED RULE 11. PRETRIAL CONFERENCE

Proposed Rule 11, except for simplification of language, is essentially the same as Present Rule 25 ("Pretrial Conference").

PROPOSED RULE 12. OMNIBUS HEARING

In keeping with the idea of using terms commonly used in adult criminal court for similar events in juvenile court, the Committee renamed this rule "Omnibus Hearing" instead of "Evidentiary Hearing" which is the title of existing Rule 26. Two other changes of note distinguish this from present Rule 26. First, under Proposed Rule 12.02, a judge who suppresses evidence as the result of an omnibus hearing may not be the finder of fact unless both parties agree. Since juveniles alleged to be delinquent or juvenile petty or traffic offenders do not have a right to a jury trial, obtaining a new judge as fact finder serves as a jury trial substitute in the interests of due process. It is likely that in most cases, especially in rural areas, parties will agree that the same judge that suppressed evidence at the omnibus hearing may preside as the finder of fact. Lawyers and judges in Greater Minnesota will complain about the hardship this rule imposes, but it is the right and just approach to ensure an impartial fact finder for a juvenile.

Second, Proposed Rule 12.03 provides that, once a demand for speedy trial is made, the omnibus hearing will not extend the time for trial unless the court finds good cause for a continuance. Good cause may include assignment of a new judge as fact finder where the original judge suppressed evidence at an omnibus hearing.

PROPOSED RULE 13. TRIALS

The time for trial in Proposed Rule 13 is different from that in Present Rule 27 ("Trials"). In existing Rule 27, the speedy trial timeclock starts from the "date of the denial of the allegations of the petition." (*Present Rule 27.02*). Proposed Rule 13.02 provides that speedy trial timeclock starts from the "date of a demand for a speedy trial." This is in line with the concept of speedy trial timing in Minnesota Rules of Criminal Procedure (*See Minn.R.Crim.P. 6.06*).

Proposed Rule 13 adds a section on joint trials (*Proposed Rule 13.07*) and a section on joinder and severance of offenses (*Proposed Rule 13.08*) which are absent in present Rule 27. It also includes a provision on the use of depositions at trial which was taken from present Rule 24 ("Discovery").

PROPOSED RULE 14. CONTINUANCE FOR DISMISSAL

AND

PROPOSED RULE 15. DELINQUENCY DISPOSITION

The Juvenile Rules Committee found that there was a misunderstanding of the effect "continuance without adjudication" (or, as it is commonly known, "withholding adjudication") had on a juvenile's future criminal record. Often, "withholding adjudication" was thought to have the same effect as "continuance for dismissal," i.e., that no juvenile record would accrue if the juvenile complied with the agreed conditions. However, in 1983, in response to *State v. Peterson*, 331 N.W.2d 483 (Minn. 1983), the Sentencing Guidelines Commission changed its guidelines so that one criminal history point would accrue for every two felony-level offenses "committed and prosecuted as a juvenile" instead of for every two felony-level "adjudications." (*Minnesota Sentencing Guidelines II.B.4*). Because Minnesota Statutes § 260.185, subd. 3 which authorizes "continuance without adjudication" requires a finding that the juvenile committed the offense alleged in the petition before the court may continue the case without an adjudication, and that finding satisfies the requirements of the sentencing guidelines for counting a juvenile offense in the criminal history score, a continuance without adjudication will not exclude the juvenile offense from a subsequent criminal history score. Proposed Rule 14 was drafted to make it clear that a continuance for dismissal involves an agreement that occurs before the court finds that the allegations of the charging document have been proved and will result in no adverse criminal history score if the juvenile complies with the agreed conditions.

In addition to making the above distinction, Proposed Rule 15 combines present Rule 29 ("Adjudication") and present Rule 30 ("Disposition"), requiring that a child not be adjudicated or continued without adjudication until the disposition hearing. This cleans up the troublesome appeals problem which was caused by separate appeals from the adjudication and from the disposition. (*Proposed Rule 15.05, subd. 1. See also the appeals provisions of Present Rule 31.03, subd. 1 and Proposed Rule 21.03, subd. 1 ("The...court shall not determine whether an offense will be adjudicated or continued without adjudication until the time of disposition.")*) In essence, the adjudication and continuance without adjudication are treated as dispositional options along with all other dispositional options.

Proposed Rule 15.05 which sets forth factors for the court to consider in making a delinquency disposition is based on case law and was the subject of extensive debate by the Committee. The provision is the consensus result of these discussions.

PROPOSED RULE 16. POST-TRIAL MOTIONS

Like its predecessor, present Rule 28 ("Motion for New Trial"), the time for bringing a motion for a new trial in Proposed Rule 16 is in conflict with the statutory time period set forth in Minnesota Statutes § 260.281 (1994). The Court of Appeals held in *In re Welfare of B.D.O.*, 450 N.W.2d 163, 165 (Minn.App. 1990) that a child is entitled to the statutory time period. The Committee relies on a separation of powers argument to assert and insist that the

time period of the Rule, not the statute, be followed. Adhering to the much longer time period allowed by statute would render bringing a motion for a new trial a pointless pursuit because any appeals will have begun and may be over by the time the statutory time period for bringing a motion for a new trial has elapsed. This goes against this Court's policy of exhausting all options at the trial court level before seeking an appeal.

PROPOSED RULE 17. JUVENILE PETTY OFFENDER AND JUVENILE TRAFFIC OFFENDER

The legislature complicated the work of the court and practitioners as well as the work of this Committee when it carved out exceptions for dealing with most misdemeanors by making them petty offenses, placed certain children committing traffic offenses under the jurisdiction of adult court and prohibited the appointment of counsel at public expense for juvenile petty offenders.

The Committee handled these concerns by drafting one rule: Proposed Rule 17. It attempts to provide a streamlined procedure for juvenile petty and juvenile traffic offenders which is sensitive to the fact that most will be proceeding without counsel. The organization of Proposed Rule 17 parallels the organization of the Minnesota Rules of Juvenile Procedure as a whole.

PROPOSED RULE 18. CERTIFICATION OF DELINQUENCY MATTERS

Except for minor changes, the text of Proposed Rule 18 remains largely the same as present Rule 32 ("Certification of Delinquency Matters") which was approved by the Supreme Court on an interim basis effective January 1, 1995. One matter to note is that Proposed Rule 18.03 (replacing present Rule 32.03) contains a clarification of what a certification study should address. It requires the preparer of a certification study report to analyze each option available to the court: certification, extended jurisdiction juvenile, or, in nonpresumptive certification cases, retention as a juvenile delinquency matter. This should eliminate confusion on this matter.

PROPOSED RULE 19. EXTENDED JURISDICTION JUVENILE PROCEEDINGS AND PROSECUTION

The text of this rule remains largely the same as present Rule 32A ("Extended Jurisdiction Juvenile Proceedings and Prosecution") which was approved by the court on an interim basis effective January 1, 1995 except for a change regarding venue issues. Traditionally, disposition of juvenile cases occurs in a child's county of residence. Since the interim rule was approved, confusion arose as to which county should pronounce the juvenile disposition and the adult sentence where the offense, determination of status as an extended jurisdiction juvenile, and plea or trial took place in a county that was not the residence of the

juvenile. As a practical matter, extended jurisdiction juvenile cases will be expensive cases to supervise with the county of residence picking up the cost. The Committee believes that since an extended jurisdiction juvenile is still under the jurisdiction of the juvenile court, the extended jurisdiction juvenile should be treated like any other juvenile. Proposed Rule 19.08 is written in conformance with Minnesota Statutes § 260.121 (1994) which suggests that the transferring court may decide whether to transfer or retain the case for disposition.

PROPOSED RULE 20. PROCEEDING WHEN CHILD IS BELIEVED TO BE MENTALLY ILL OR MENTALLY DEFICIENT AND DEFENSE OF MENTAL ILLNESS OR DEFICIENCY

Proposed Rule 20 replaces present Rule 33 ("Proceedings When Child is Believed to Be Mentally Ill or Mentally Deficient") and is based on Minnesota Rules of Criminal Procedure 20. Present Rule 33 only deals with competency to proceed. National case law recognizes a juvenile's right to the defense of mental illness or mental deficiency. (*See, e.g., In the Interest of R.G.W.*, 342 A.2d 869 (N.J. 1975)). Proposed Rule 20 deals with both competency procedure and defense of mental illness and mental deficiency.

Proposed Rule 20 also fills the gap that exists in the present rules as to what action the court can take once the court finds the child to be incompetent or not guilty by reason of mental illness or mental deficiency. For a child found to be incompetent to proceed,

(1) the court shall order any existing civil commitment continued. If the child is not under commitment, the court may order the child held at a shelter or treatment facility for up to seventy-two (72) hours and direct civil commitment proceedings be initiated;

(2) if it is determined that commitment proceedings are inappropriate and the child is under CHIPS jurisdiction, the court shall order such jurisdiction be continued. If the child is not under CHIPS jurisdiction, the court may order the child held for up to seventy-two (72) hours at an appropriate facility and direct CHIPS proceedings be initiated;

(3) if it is determined that neither commitment proceedings nor CHIPS proceedings are appropriate, the child shall be released to the child's parent(s), legal guardian or legal custodian under such conditions deemed appropriate by the court.

Where a child is found not guilty by reason of mental illness or mental deficiency,

(1) the court shall order any existing civil commitment continued. If the child is not under commitment, the court may order the child held at a shelter or treatment facility for up to seventy-two (72) hours and shall direct civil commitment proceedings be initiated;

(2) if it is determined that the child does not meet the criteria for civil commitment jurisdiction and the child is under CHIPS jurisdiction, the court shall order such jurisdiction be continued. If the child is not under CHIPS jurisdiction, the court

may order the child held for up to seventy-two (72) hours in an appropriate facility and shall direct CHIPS proceedings be initiated.

PROPOSED RULE 21. APPEALS

Proposed Rule 21 remains largely the same as present Rule 31 ("Appeals") which was approved by the Supreme Court on an interim basis effective January 1, 1995. There are three changes of note.

First, the proposed rule includes references to juvenile petty and juvenile traffic offenders.

Second, the "final orders" section of present Rule 31.03, subd. 1(A) has been modified in Proposed Rule 21.03, subd. 1(A). "Final orders" now include an order for continuance without adjudication (and its accompanying disposition) as well as any subsequent order adjudicating a child delinquent (and that accompanying disposition) after the child was granted a continuance without adjudication. Because a child continued without adjudication accrues criminal history points in the same manner as a child who is adjudicated delinquent (*see discussion of Proposed Rules 14 and 15 above*), the Committee determined that an order for continuance without adjudication (and its accompanying disposition) should be separately appealable. Additionally, the language of present Rule 31.03, subd. 1(A) has been reworked in Proposed Rule 21.03, subd. 1(A) to clarify each final order by setting it out separately. For example, determination as an extended jurisdiction juvenile is separately appealable from the conviction and sentencing order for an extended jurisdiction juvenile. Because the court may not determine whether an offense will be adjudicated or continued without adjudication until the time of disposition, (*Proposed Rule 15.05, subd. 1; Proposed Rule 21.03, subd. 1*), adjudication and disposition is listed as one final order as is continuance without adjudication and disposition.

Finally, Proposed Rule 21.04, subd. 3(A) clarifies present Rule 31.04, subd. 3(A) by providing who must serve notice of entry of the order appealed from upon the prosecuting attorney. The proposed rule provides that an appeal by the prosecuting attorney must be made within five (5) days after notice of entry of the order appealed from is served upon the prosecuting attorney by the district court administrator.

PROPOSED RULE 22. SUBSTITUTION OF JUDGE

Because the existing rules did not provide for a procedure for removal of a judge in a juvenile court proceeding, and application of the rule governing removal of judges in civil cases was not particularly suited to the time periods involved in juvenile proceedings, Proposed Rule 22 was drafted. It is based on Minnesota Rules of Criminal Procedure 26.03, subd. 13, except that a judge who suppresses evidence may not preside as the trier of fact at a subsequent trial on the matter unless both parties agree. In addition, a judge with personal knowledge of the child or the child's social or juvenile court history can be removed without any other showing of bias. The commentary for Proposed Rule 22 sets out the justification for these changes.

PROPOSED RULE 23. REFEREE

Proposed Rule 23 remains essentially the same as present Rule 2 ("Referee") except for one addition: Proposed Rule 23.03 allows a referee to be removed by serving the other parties and filing with the court a notice to remove in the same manner as is provided in Proposed Rule 22. However, once a party has disqualified a referee as a matter of right, the party may disqualify the substitute judge or referee only upon an affirmative showing of cause.

PROPOSED RULE 24. GUARDIAN AD LITEM

Except for reorganization and simplification of language, Proposed Rule 24 is the same as present Rule 5 ("Guardian ad Litem").

PROPOSED RULE 25. NOTICE

As discussed above, present Rule 9 ("Notice") was revised to reflect the common practice of mailing out a "notice in lieu of summons" instead of personal service for notice of all hearings which is required by Minnesota Statutes § 260.141, subd. 2 (1994). As such, Proposed Rule 25 is arguably in violation of the statute. The Committee relies on a separation of powers argument as the basis for these changes and will recommend that the statute be amended to be in conformance with the proposed rule. If a person responds to a notice in lieu of summons, that person is deemed to waive a right to personal service of a summons. Failure to respond to a notice in lieu of summons results in the court issuing a summons. Only after the summons is personally served may the court issue a warrant for failure to appear. This procedure is economical and should provide sufficient due process safeguards.

PROPOSED RULE 26. SUBPOENAS,

PROPOSED RULE 27. MOTIONS,

PROPOSED RULE 28. COPIES OF ORDERS,

AND

PROPOSED RULE 31. TIMING

Except for simplification of language, Proposed Rule 26 ("Subpoenas"), Proposed Rule 27 ("Motions") and Proposed Rule 28 ("Copies of Orders") are the same as present Rules 13 ("Subpoenas"), 14 ("Motions") and 10 ("Copies of Orders") respectively. With the exception of the addition of "Columbus Day" to conform to Minnesota Rules of Criminal Procedure 34,

Proposed Rule 31 ("Timing") is the same as present Rule 65 ("Timing").

PROPOSED RULE 29. RECORDING

Proposed Rule 29 replaces present Rule 11 ("Recording") and makes changes which comport with common practice. For instance, Proposed Rule 29.02 requires that applications for transcripts be made in writing to the court reporter rather than in writing to the court or on the record as present Rule 11 allows. This change reflects the common practice and permits the court reporter to make financial arrangements for preparation of the transcript. Proposed Rule 29.03 was revised to make it clear that a person requesting a transcript who claims to be unable to pay for the preparation costs must apply to the court for an order directing the preparation and delivery of the transcript at public expense to allow for screening of in forma pauperis status.

PROPOSED RULE 30. RECORDS

Proposed Rule 30 is substantially the same as present Rule 34 ("Records"). Recent legislation regarding access to records and provision of orders to certain entities, such as schools and the Bureau of Criminal Apprehension, is referenced in the commentary. Since these statutory requirements are subject to regular revision, including them in the body of the rule would result in possibly annual revision.

RESPECTFULLY SUBMITTED,

MINNESOTA SUPREME COURT ADVISORY
COMMITTEE ON THE MINNESOTA RULES OF
JUVENILE PROCEDURE

PROPOSED MINNESOTA RULES OF JUVENILE PROCEDURE

Delete present Minnesota Rules of Juvenile Procedure 1 through 36 and insert the following:

MINNESOTA RULES OF JUVENILE PROCEDURE

DELINQUENCY, JUVENILE PETTY OFFENSES AND JUVENILE TRAFFIC OFFENSES

RULE 1. SCOPE, APPLICATION AND GENERAL PURPOSE

RULE 1.01 SCOPE AND APPLICATION

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

Juvenile protection matters, including truants and runaways, are governed by the procedures in Minnesota Rules of Juvenile Procedure 37 through 65.

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

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

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

RULE 1.02 GENERAL PURPOSE

The purpose of the juvenile rules is to establish uniform practice and procedures for the juvenile courts of the State of Minnesota, and to assure that the constitutional rights of the child are protected. These rules shall be construed to achieve these purposes.

Comment--Rule 1

The Indian Child Welfare Act does not apply to placements of Indian children which are based upon an act which, if committed by an adult, would be deemed a crime. 25 U.S.C. § 1903(1) (1988). However, Minn.Stat. § 257.352 (1994) of the Minnesota Indian Family Preservation Act requires that the Indian child's tribal social service agency receive notice when the court transfers legal custody of the child under Minn.Stat. § 260.185, subd. 1(c)(1), (2) and (3) (1994) following an adjudication for a misdemeanor-level delinquent act.

RULE 2. ATTENDANCE AT HEARINGS AND PRIVACY

RULE 2.01 RIGHT TO ATTEND HEARING

Juvenile court proceedings are closed to the public except as provided by law. Only the following may attend hearings:

- (A) the child, guardian ad litem and counsel for the child;
- (B) parent(s), legal guardian, or legal custodian of the child and their counsel;
- (C) the spouse of the child;
- (D) the prosecuting attorney;
- (E) other persons requested by the parties listed in (A) through (D) and approved by the court;
- (F) persons authorized by the court under such conditions as the court may approve;
- (G) persons authorized by statute, under such conditions as the court may approve; and
- (H) any person who is entitled to receive a summons or notice under these rules.

RULE 2.02 EXCLUSION OF PERSONS WHO HAVE A RIGHT TO ATTEND HEARINGS

The court may temporarily exclude any person, except counsel and the guardian ad litem, when it is in the best interests of the child to do so. The court shall note on the record the reasons a person is excluded. Counsel for the person excluded has the right to remain and participate if the person excluded had the right to participate in the proceeding. An unrepresented child can not be excluded on the grounds that it is in the best interests of the child to do so.

RULE 2.03 PRESENCE REQUIRED

Subd. 1. Child. The child shall have the right to be present at all hearings. The child is deemed to waive the right to be present if the child voluntarily and without justification is absent after the hearing has commenced or if the child disrupts the proceedings. Disruption of the proceedings occurs if the child, after warning by the court, engages in conduct which interrupts the orderly procedure and decorum of the court. The court may use all methods of restraint necessary to conduct the proceedings in an orderly manner. If the child is restrained or removed from the courtroom, the court shall state the reasons for the restraint or removal on the record. Except at trials and dispositional hearings, the child's appearance may be waived if the child is hospitalized in a psychiatric ward and the treating physician states in writing the reasons why not appearing would serve the child's best interests.

Subd. 2. Counsel.

(A) Counsel for the child shall be present at all hearings.

(B) The prosecuting attorney shall be present or available for all hearings unless otherwise agreed by counsel and approved by the court.

Subd. 3. Parent, Legal Guardian or Legal Custodian. The parent, legal guardian or legal custodian of a child who is the subject of a delinquency or extended jurisdiction juvenile proceeding shall accompany the child to all hearings unless excused by the court for good cause shown. If such person fails to attend a hearing with the child without excuse, the court may issue an arrest warrant and/or hold the person in contempt. The court may proceed if it is in the best interests of the child to do so even if the parent, legal guardian, or legal custodian fails to appear.

RULE 2.04 RIGHT TO PARTICIPATE

Subd. 1. Child and Prosecuting Attorney. The child and prosecuting attorney have the right to participate in all hearings.

Subd. 2. Guardian ad Litem. The guardian ad litem has a right to participate and advocate for the best interests of the child at all hearings.

Subd. 3. Parent(s), Legal Guardian, or Legal Custodian. Except in their role as guardian ad litem for the child, the parent(s), legal guardian, or legal custodian may not participate separately at hearings until the dispositional stage of the proceedings and the court shall advise them of this right. A parent, legal guardian, or legal custodian shall not participate as counsel for the child unless licensed to practice law.

Subd. 4. Generally. Persons represented by counsel, who have a right to participate, shall participate through their counsel. Unrepresented persons may participate on their own behalf.

RULE 2.05 EX-PARTE COMMUNICATIONS

The court shall not receive or consider any ex-parte communication from anyone concerning a proceeding, including conditions of release, detention, evidence, adjudication, disposition, or any other matter. The court shall fully disclose to all counsel on the record any attempted ex-parte communication.

Comment--Rule 2

Minn.R.Juv.P. 2.01 allows persons authorized by statute to attend juvenile court proceedings. They include the public, in cases where a juvenile over age 16 is alleged to have committed a felony, and victims. The public is also entitled to be present during a juvenile certification hearing, except that the court may exclude the public from portions of a certification

hearing to discuss psychological material or other evidence that would not be accessible to the public in an adult proceeding. Minn.Stat. § 260.155, subd. 1(c) (1994). The statute does not currently permit exclusion when similar material is being presented in an extended jurisdiction juvenile proceeding. This may simply be an oversight. See also Minn.Stat. § 609.115, subd. 6 (1994).

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

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

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

RULE 3. RIGHT TO COUNSEL

RULE 3.01 GENERALLY

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), legal guardian or legal custodian. The attorney shall act solely as the counsel for the child.

RULE 3.02 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.

Subd. 4. Probation Violation and Modification of Disposition for Delinquent Child. In any proceeding in which a delinquent child is alleged to have violated the terms of probation, or where a modification of disposition is proposed, the child has the right to appointment of counsel at public expense. If the child waives the right to counsel, the court shall appoint stand-by counsel.

Subd. 5. Juvenile Petty Offense or Juvenile Traffic Offense. In any proceeding in which the child is charged as a juvenile petty offender or juvenile traffic offender, the child or the child's parent may retain private counsel, but the child does not have a right to appointment of a public defender or other counsel at public expense, where a child charged with a misdemeanor is designated a juvenile petty offender by the prosecuting attorney as set forth in Minnesota Rules of Juvenile Procedure 17.01, subd. 1(B) or as otherwise provided pursuant to Minnesota Rules of Juvenile Procedure 3.02, subds. 3, 6 and 7. Except in the discretion of the Office of the State Public Defender, a child is not entitled to appointment of an attorney at public expense in an appeal from adjudication and disposition in a juvenile petty offender or juvenile traffic offender matter.

Subd. 6. Detention. Every child has the right to be represented by an attorney at a detention hearing. An attorney shall be appointed for any child appearing at a detention hearing who cannot afford to hire an attorney. If the child waives representation, standby counsel shall be appointed.

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

RULE 3.03 DUAL REPRESENTATION

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

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

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

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

(C) A child may not agree to dual representation unless the child has first consulted with separate counsel.

RULE 3.04 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, legal guardian, legal custodian or guardian ad litem. The court shall inquire to determine if the child has met privately with the attorney, and if the child understands the charges and proceedings, including the possible disposition, any collateral consequences, and any additional facts essential to a broad understanding of the case.

Subd. 2. Court Approval/Disapproval. If the court accepts the child's waiver, it shall state on the record the findings and conclusions that form the basis for its decision and shall appoint stand-by counsel as required by Minnesota Rules of Juvenile Procedure 3.02.

RULE 3.05 RENEWAL OF ADVISORY

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

RULE 3.06 ELIGIBILITY FOR COURT APPOINTED COUNSEL AT PUBLIC EXPENSE

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 3.07 RIGHT OF PARENT(S), LEGAL GUARDIAN(S), LEGAL CUSTODIAN(S) AND GUARDIAN AD LITEM TO COUNSEL

Subd. 1. Right of Parent(s), Legal Guardian(s) or Legal Custodian(s). The parent(s), legal guardian or legal custodian 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), legal guardian or legal custodian 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--Rule 3

Minn.R.Juv.P. 3 prescribes the general requirements for appointment of counsel for a juvenile. *In re Gault*, 387 U.S. 1 (1967); Minn.Stat. § 260.155, subd. 2 (1994).

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

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

If a child in a felony or gross misdemeanor case exercises the right to proceed without counsel, Faretta v. California, 422 U.S. 806 (1975), State v. Richards, 456 N.W.2d 260 (Minn. 1990), then Minn.R.Juv.P. 3.02, subd. 1 requires the court to appoint standby counsel to assist and consult with the child at all stages of the proceedings. See, e.g., McKaskle v. Wiggins, 465 U.S. 168 (1984); State v. Jones, 266 N.W.2d 706 (Minn. 1978); Burt v. State, 256 N.W.2d 633 (Minn. 1977); State v. Graff, 510 N.W.2d 212 (Minn. Ct. App. 1993) pet. for rev. denied (Minn. Feb. 24, 1994); State v. Savior, 480 N.W.2d 693 (Minn. Ct. App. 1992); State v. Parson, 457 N.W.2d 261 (Minn. Ct. App. 1990) pet. for rev. denied (Minn. July 31, 1990); State v. Lande, 376 N.W.2d 483 (Minn. Ct. App. 1985) pet. for rev. denied (Minn. Jan. 17, 1986).

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

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

In State v. Borst, 278 Minn. 388, 154 N.W.2d 888 (1967), the Minnesota Supreme Court, using its inherent supervisory powers, anticipated the United States Supreme Court's Argersinger and Scott decisions, and shortly after Gideon required the appointment of counsel even in misdemeanor cases "which may lead to incarceration in a penal institution." Id. at 397, 154 N.W.2d at 894. Accord City of St. Paul v. Whidby, 295 Minn. 129, 203 N.W.2d 823 (1972); State v. Collins, 278 Minn. 437, 154 N.W.2d 688 (1967); State v. Illingworth, 278

Minn. 687, 154 N.W.2d 687 (1967) (ordinance violation). The Borst Court relied, in part, upon Gault's ruling on the need for counsel in delinquency cases to expand the scope of the right to counsel for adult defendants in any misdemeanor or ordinance prosecutions that could result in confinement. 278 Minn. at 392-93, 154 N.W.2d at 891. Like the Court in Gault, Borst recognized the adversarial reality of even "minor" prosecutions.

At the very least, Minn.R.Juv.P. 3.02, subd. 3 places the prosecution and court on notice that out-of-home placement may not occur unless counsel or stand-by counsel is appointed. For example, a child appearing on a third alcohol offense faces a dispositional possibility of out-of-home placement, but cannot be placed out of the home if the child is not represented by counsel. See Minn.R.Juv.P. 17.03, subd. 1(D). 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. 3.02, subd. 3 also provides that a child retains an absolute right to withdraw any plea obtained without the assistance of counsel or to obtain a new trial if adjudicated delinquent without the assistance of counsel, if those convictions 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. Ct. App. 1993) ("The cumulative history of uncounseled admissions resulting after an inadequate advisory of the right to counsel constitutes a manifest injustice.") Appointing counsel solely at disposition is inadequate to assure the validity of the underlying offenses on which such placement is based. Of course, routine appointment of counsel in all cases would readily avoid any such dilemma.

Minn.Stat. § 260.015, subd. 21 (Supp. 1995) defines "juvenile petty offenses," and converts most offenses that would be misdemeanors if committed by an adult into petty offenses. Minn.R.Juv.P. 3.02, subd. 5 implements procedurally the legislative redefinition of misdemeanors. If a child is charged as a juvenile petty offender, the child or the child's parents may retain and be represented by private counsel, but the child does not have a right to the appointment of a public defender or other counsel at public expense. The denial of access to court appointed counsel is based on the limited dispositions that the juvenile court may impose on juvenile petty offenders. Minn.Stat. § 260.195, subd. 3 (Supp. 1995). If the court seeks to impose dispositions other than those authorized pursuant to Minn.Stat. § 260.195, subd. 3 (Supp. 1995), then the provisions of Minn.R.Juv.P. 3.02, subd. 2 or subd. 3 may be applicable. Where inpatient treatment is a possibility, as it is pursuant to Minn.Stat. § 260.195, subd. 4 (1994) for children who are found to have committed a third or subsequent juvenile alcohol or controlled substance offense, Minn.R.Juv.P. 3.02, subd. 3 provides a right to counsel at public expense even if the prosecuting attorney decides to designate the child a juvenile petty offender. See Minn.R.Juv.P. 17.03, subd. 1(D). A child retains an absolute right to withdraw any plea obtained without the assistance of counsel or to obtain a new trial if adjudicated a petty offender without the assistance of counsel, if those 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. Ct. App. 1993).

Minn.R.Juv.P. 3.02, subd. 6 is an exception to the prohibition of appointment of counsel at public expense for a juvenile traffic or juvenile petty offender. If such a child is detained,

at least at the hearing to determine if continued detention is necessary, the child is entitled to court appointed counsel if unrepresented because substantial liberty rights are at issue.

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

Minn.R.Juv.P. 3.03 regarding advising children of the perils of dual representation is patterned after Minn.R.Crim.P. 17.03.

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

While recognizing a right to waive counsel and proceed pro se, Minn.R.Juv.P. 3.02 requires juvenile courts to appoint 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."); Iones, 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 is proposed waiver").

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

To determine whether a child "knowingly, intelligently, and voluntarily" waived the right to counsel, Minn.R.Juv.P. 3.04, subd. 1 requires the court to look at the "totality of the circumstances," which includes but is not limited to the child's age, maturity, intelligence,

education, experience, and ability to comprehend and the presence and competence of the child's parent(s), legal guardian or legal custodian. In addition, the court shall decide whether the child understands the nature of the charges and the proceedings, the potential disposition that may be imposed, and that admissions or findings of delinquency may be valid even without the presence of counsel and may result in more severe sentences if the child re-offends and appears again in juvenile court or in criminal court. United States v. Nichols, --- 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. 3.05 requires that at each subsequent court appearance at which a child appears without counsel, the court shall again determine on the record whether or not the child desires to exercise the right to counsel.

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

Minn.R.Juv.P. 3.06, subd. 2 provides that if the parent(s) of a child can afford to retain counsel but have not done so and the child cannot otherwise afford to retain counsel, then the court shall appoint counsel for the child. When parents can afford to retain counsel but do not do so and counsel is appointed for the child at public expense, in the exercise of its sound discretion, the court may order reimbursement for the expenses and attorney's fees expended on behalf of the child. Minn.Stat. § 260.251, subd. 4 (1994) ("[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. 3.07 implements the rights of a child's parent(s), legal guardian or legal custodian to participate in hearings affecting the child. After a child has been found to be delinquent and state intervention potentially may intrude upon the parent's custodial interests in the child, the parent(s) have an independent right to the assistance of counsel appointed at state expense if they are eligible for such services.

RULE 4. WARRANTS

RULE 4.01 WARRANT FOR IMMEDIATE CUSTODY

Subd. 1. Probable Cause Required. Probable cause may be established by facts set forth in writing attached to the charging document, by facts set forth in the charging document, by affidavit(s) attached to the charging document, or by sworn testimony presented to the court on the record. The court may issue a warrant for immediate custody of a delinquent child or a child alleged to be delinquent if the court finds that there is probable cause to believe that:

- (A) the child has committed a delinquent act as defined by Minnesota Statutes § 260.015, subd. 5; and
- (B) the child failed to appear after having been personally served with a summons or subpoena, or reasonable efforts to personally serve the child have failed, or there is a substantial likelihood that the child will fail to respond to a summons; or
- (C) the child or others are in danger of imminent harm; or
- (D) the child has left the custody of the detaining authority without permission of the court; or
- (E) the child has violated a court order; or
- (F) the child has violated the terms of probation.

The court may only issue a warrant for immediate custody of a juvenile petty or juvenile traffic offender or a child alleged to be a juvenile petty or juvenile traffic offender if the court finds that there is probable cause to believe that:

- (A) the child has committed a juvenile petty offense as defined by Minnesota Statutes § 260.015, subd. 21 or a juvenile traffic offense as defined by Minnesota Statutes § 260.193; and
- (B) the child failed to appear after having been personally served with a summons or subpoena, or reasonable efforts to personally serve the child have failed.

Subd. 2. Contents of Warrant for Immediate Custody. A warrant for immediate custody shall be signed by a judge and shall:

- (A) order the child to be brought immediately before the court or the child to be taken to a detention facility designated by the court to be detained pending a detention hearing or the child to be transferred to an individual or agency, including but not limited to any welfare agency or hospital as the welfare of the child might require;
- (B) state the name and address of the child, or if unknown, designate the child by any name or description by which the child can be identified with reasonable certainty;
- (C) state the age and sex of the child, or, if the age of the child is unknown, that the child is believed to be of an age subject to the jurisdiction of the court;
- (D) state the reasons why the child is being taken into custody;
- (E) where applicable, state the reasons for a limitation on the time or location of the execution of the warrant; and
- (F) state the date when issued, and the county and court where issued.

RULE 4.02 EXECUTION OF WARRANT FOR IMMEDIATE CUSTODY

Subd. 1. Who May Execute. The warrant for immediate custody may only be executed by a peace officer authorized by law to execute a warrant.

Subd. 2. How Executed. The warrant for immediate custody shall be executed by taking the child into custody.

Subd. 3. Where Executed. The warrant for immediate custody may be executed at any place in the state except where prohibited by law, unless the judge who issues the warrant limits in writing on the warrant the location where the warrant may be executed.

Subd. 4. When Executed. A warrant may be executed at any time unless the judge who issues the warrant limits in writing on the warrant the time during which the warrant may be executed. If the offense is a misdemeanor, petty offense or juvenile traffic offense, the child may not be taken into custody on Sunday or between the hours of 10:00 o'clock p.m. and 8:00 o'clock a.m. on any other day except by direction of the judge, endorsed on the warrant when exigent circumstances exist, or when the child named in the warrant is found on a public highway or street.

Subd. 5. Possession of Warrant. A warrant for immediate custody need not be in the peace officer's possession at the time the child is taken into custody.

Subd. 6. Advisory. When a warrant is executed, the child and the child's parent(s), legal guardian or legal custodian, if present, shall immediately be informed of the existence of the warrant for immediate custody and as soon as possible of the reasons why the child is being taken into custody.

Comment--Rule 4

If the child fails to appear in response to a summons without reasonable cause, then the court may issue a warrant to take the child into immediate custody pursuant to Minn.R.Juv.P. 4.01, subd. 1. See Minn.Stat. § 260.145 (1994). Probable cause is required for every warrant issued. Before the court may issue a warrant, it shall make a finding of probable cause based on the contents of the petition, any supporting affidavits or sworn supplemental testimony to believe that the child committed an act governed by Minn.Stat. § 260.015, subd. 5 (1994); subd. 21 (Supp. 1995); or Minn.Stat. § 260.193 (Supp. 1995). In addition, the court must also find either that the summons was personally served on the child and the child failed to appear, that service will be ineffectual, or, for a delinquent child or child alleged to be delinquent that there is a substantial likelihood that the child will not respond to a summons, or that the child or others are in danger of imminent harm. Minn.Stat. § 260.145 (1994); Minn.Stat. § 260.135, subd. 5 (1994).

Minn.R.Juv.P. 4.01, subd. 2 prescribes the contents of the warrant. When a child is taken into custody, a detention hearing shall commence pursuant to Minn.R.Juv.P. 5 within thirty-six (36) hours.

Under Minn.R.Juv.P. 4.02, a warrant may be executed only by a peace officer. Limitations on the manner of execution are the same as those set out in Minn.R.Crim.P. 3.03, subd. 3 for adults where the offense charged is a misdemeanor or non-criminal offense. The minor nature of misdemeanors, juvenile petty and juvenile traffic offenses should not ordinarily justify taking a child into immediate custody during the proscribed period of time.

RULE 5. DETENTION

RULE 5.01 SCOPE AND GENERAL PRINCIPLES

Minnesota Rules of Juvenile Procedure 5 governs all physical liberty restrictions placed upon a child before trial, disposition or pending a probation violation hearing.

RULE 5.02 DEFINITIONS

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

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

Subd. 2. Detaining Authority. The detaining officer, the detaining officer's supervisor, the person in charge of the detention facility, the prosecuting attorney or the court is a detaining authority for the purposes of this rule.

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

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

RULE 5.03 DETENTION DECISION

Subd. 1. Presumption for Unconditional Release. The child shall be released unless:

- (A) the child would endanger self or others; or
- (B) the child would not appear for a court hearing; or
- (C) the child would not remain in the care or control of the person into whose lawful

custody the child is released; or

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

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

Subd. 2. Detention Factors. The following non-exclusive factors may justify a decision to detain a child:

(A) the child is charged with the misdemeanor offense of arson, assault, prostitution or a criminal sexual offense;

(B) the child was taken into custody for an offense which would be a presumptive commitment to prison offense if committed by an adult, or a felony involving the use of a firearm;

(C) the child was taken into custody for additional felony charges while other delinquency charges are pending;

(D) the child was taken into custody for a felony and, as a result of prior delinquency adjudication(s), has received an out-of-home placement;

(E) the child was an escapee from an institution or other placement facility to which the court ordered the child;

(F) the child has a demonstrable recent record of willful failure to appear at juvenile proceedings;

(G) the child is a fugitive from another jurisdiction; or

(H) the above factors are not met but the detaining authority documents in writing, objective and articulable reasons why the child's welfare or public safety would be immediately endangered if the child were released.

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

Subd. 4. Factors Which Can Not Support Detention Decision. In deciding whether detention is justified, the detaining authority shall not consider the child or the child's family's race, color, gender, sexual orientation, religion, national origin, economic or public assistance status, family structure or residential mobility.

RULE 5.04 RELEASE OR CONTINUED DETENTION

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

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

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

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

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

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

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

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

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

Subd. 3. Child Taken Into Custody and Placed in an Adult Jail or Municipal Lockup. The child shall be released no later than twenty-four (24) hours after being taken into custody, excluding Saturdays, Sundays and legal holidays, unless a delinquency petition and a motion for certification to adult court has been filed with the court within that twenty-four (24) hours. If the jail or municipal lockup is in a standard metropolitan statistical area, the child shall be held no longer than six (6) hours after arrest, including Saturdays, Sundays and holidays unless a delinquency petition and a motion for certification to adult court has been filed with the court within that six (6) hour period and a judge or referee has determined the child shall remain in detention.

Subd. 4. Probable Cause Determination.

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

(B) *Application and Record.* The facts establishing probable cause to believe the offense(s) was committed and that the child committed the offense(s) shall be presented to the judge upon oath, either orally or in writing. Oral testimony shall be recorded and retained by

the judge. Written facts may be presented to the judge by telephone, facsimile, video, or other similar device. If probable cause is determined on written facts and the judge is not personally present to sign the determination, the document shall be presented to the judge for signature within two (2) business days. The judge shall be advised if a prior request for a probable cause determination was made and turned down relative to the same incident.

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

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

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

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

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

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

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

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

Subd. 6. Release to Custody of Parent or Other Responsible Adult. A child released from a place of detention shall be released to the custody of the child's parent(s), legal guardian, or legal custodian if deemed appropriate by the detaining authority. If these individuals are unavailable or deemed inappropriate, the detaining authority may release the child to a member of the extended family or kinship network or other suitable adult deemed appropriate by the detaining authority and acceptable to the child.

RULE 5.05 DETENTION REPORTS

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

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

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

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

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

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

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

RULE 5.06 IDENTIFICATION PROCEDURES

Subd. 1. Photographing.

(A) *Generally.* A detained child may be photographed when the child is taken into custody in accordance with the laws relating to arrests.

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

Subd. 2. Fingerprinting.

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

(B) *Report.* A report stating the name of the child fingerprinted and the date of the

fingerprinting shall be filed with the court.

Subd. 3. Line-Up.

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

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

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

RULE 5.07 DETENTION HEARING

Subd. 1. Time and Filing. The court shall commence a detention hearing within thirty-six (36) hours of the child being taken into custody. The following documents shall be filed with the court before the detention hearing:

(A) a report or reports that the child is being held in detention filed pursuant to Minnesota Rules of Juvenile Procedure 5.05; and

(B) a charging document with probable cause.

Subd. 2. Notice.

(A) *Child, Child's Counsel, Prosecuting Attorney, Child's Parent(s), Legal Guardian or Legal Custodian and Spouse of the Child.* The court shall inform the child, the child's counsel, the prosecuting attorney, the child's parent(s), legal guardian or legal custodian and spouse of the child of the time and place of the detention hearing either by notice in lieu of summons or summons. Failure to inform the parent(s), legal guardian or legal custodian or spouse of the child or their absence at the hearing shall not prevent the hearing from being conducted or invalidate an order of detention.

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

(1) the time and place of the detention hearing;

(2) the name and telephone number of a person that can be contacted for additional information; and

(3) the right of the victim and victim's family to attend the detention hearing.

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

Subd. 3. Advice of Rights. At the beginning of the detention hearing, the court shall advise all persons present of:

- (A) the reasons why the child was taken into custody;
- (B) the allegations of the charging document;
- (C) the purpose and scope of the detention hearing;
- (D) the right of the child to be represented by counsel at the detention hearing and at every other stage of the proceedings, and the right of a child alleged to be delinquent to counsel at public expense; and
- (E) the right of the child to remain silent.

Subd. 4. Evidence. The court may admit any evidence including reliable hearsay and opinion evidence that is relevant to the decision whether to detain the child. The court may not admit evidence of privileged communications.

Subd. 5. Findings Necessary for Continued Detention. A court may detain a child beyond thirty-six (36) hours if, after a hearing, the court finds:

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

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

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

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

Subd. 6. Order.

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

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

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

Subd. 7. Extension of Time for Detention Hearing. For good cause shown, the court may extend the time for a detention hearing by twenty-four (24) hours on written application of the prosecuting attorney, if the application for extension is filed with the court within the time prescribed by this rule. The court may extend the time for one additional twenty-four (24) hour period upon a second written application being filed within the extended time previously ordered by the court.

RULE 5.08 DETENTION REVIEW

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

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

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

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

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

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

Comment--Rule 5

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

assistance, protect the child's access to education to the extent reasonably possible, and ensure public safety.

The primary concern of this rule is a child's physical liberty and living arrangements pending trial and disposition. For purposes of this rule, other non-physical limitations on a child's autonomy, such as a court order to avoid contact with victims or witnesses, to attend school, to remain under the control of parents or custodians, or the like, do not constitute liberty restrictions that invoke either the procedures of this rule or the expedited timing of procedures for youths physically detained or restricted.

Minn.Stat. § 260.135, subd. 5 (1994) authorizes the officer serving a summons with a judicial endorsement to take into immediate custody a child whose health or safety is endangered. Minn.Stat. § 260.145 (1994) authorizes the court to issue a warrant for immediate custody for a child who fails to appear in court in response to a summons. Minn.Stat. § 260.165 (1994) authorizes a child to be taken into custody pursuant to the laws of arrest, or a peace officer to apprehend a child who has run-away or who is found in circumstances that endanger the child's health or safety. Minn.R.Juv.P. 5.07 defines the circumstances under which a child is subject to continuing physical restraints. Minn.Stat. § 260.172 (1994) authorizes a detention hearing and provides the statutory framework that governs this rule.

Minn.R.Juv.P. 5.02, subd. 3 defines the places in which a child's liberty is restricted. A child's liberty is restricted when the child is placed at home, but his or her physical mobility is limited by electronic home monitoring, house arrest, or other physical restrictions. In addition, the provisions of this rule apply whenever, prior to disposition, the child is placed outside of the home, whether or not the placement is in a secure facility. Thus, a child's liberty is restricted when placed in a foster care (Minn.Stat. § 260.015, subd. 7 (1994)) or shelter care facility (Minn.Stat. § 260.015, subd. 17 (1994)), in a detoxification or mental health treatment facility, in a secure detention facility (Minn.Stat. § 260.015, subd. 16 (1994)), in an adult jail or lock-up, or other place of detention.

Minn.R.Juv.P. 5.03, subd. 1 establishes a general presumption in favor of unconditional release for all children taken into custody. Minn.R.Juv.P. 5.03, subd. 2 provides some non-exclusive evidentiary guidelines by which detaining authorities can decide whether a child meets the criteria for detention. Under Minn.R.Juv.P. 5.03, subd. 2, the detaining authority may detain a child if it believes or the court finds that the child poses a danger to other people because the child is charged with a presumptive commitment to prison offense. The presumptive commitment to prison offenses are enumerated under Section V, Offense Severity Reference Table of the Minnesota Sentencing Guidelines. In addition, an inference the child poses a danger to others applies when the child uses a firearm in the commission of a felony pursuant to Minn.Stat. § 260.125, subd. 2a and 2b (1995). However, detaining authorities should exercise individualized discretion and not automatically detain all children charged with certain offenses. Moreover, detaining authorities ought not detain children who meet the evidentiary criteria if other, less restrictive alternatives would assure the child's subsequent court appearance, welfare, and public safety. The non-exclusive evidentiary criteria emphasize objective indicators that the child poses a danger to self or others, or would fail to return for court appearances. The list of criteria set out in Minn.R.Juv.P. 5.03, subd. 2 are examples of factors which may justify pretrial detention. If a detained child does not meet any of the enumerated criteria, the detaining authority may justify detention only if a written report is filed stating objective and articulable

reasons for detention. Minn.R.Juv.P. 5.03, subd. 2.

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

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

Minn.R.Juv.P. 5.05, subd. 4 requires the court administrator to notify the office of the Public Defender that a child is in custody and the time of the detention hearing and to provide facsimile copies of all reports transmitted to the court. If a specific attorney has been assigned to represent the child, that attorney should receive notice. In jurisdictions where public defenders rotate, notice to the chief public defender would be sufficient. Minnesota data privacy laws do not restrict notification of counsel of a child's detention prior to the first appearance in court and appointment of counsel. The rules of professional responsibility and attorney client privilege adequately protect the privacy of the child.

Minn.R.Juv.P. 5.06, subd. 1 implements the provision of Minn.Stat. § 260.161, subd. 3(c)(Supp. 1995) which authorizes peace officers to take the photograph of a child taken into custody according to the laws of arrest, pursuant to Minn.Stat. § 260.165, subd.1(b)(1994). Any photograph taken of a child must be destroyed when the child reaches the age of 19 years. Minn.R.Juv.P. 5.06, subd. 2 implements the provisions of Minn.Stat. § 299C.10 (Supp.1995) which authorize law enforcement personnel to take the fingerprints of all juveniles committing felonies.

Minn.R.Juv.P. 5.06, subd. 3 implements the policies of U.S. v. Wade, 388 U.S. 218 (1967) to provide the assistance of counsel to minimize the dangers of erroneous misidentification. See Feld, "Criminalizing Juvenile Justice: Rules of Procedure for the Juvenile Court," 62 Minn. L. Rev. 141, 209-16 (1984). Unlike the formalistic limitations imposed by Kirby v. Illinois, 406 U.S. 682 (1972), the rule recognizes that the dangers of unreliability, suggestibility, and error are inherent in all identification procedures. The rule attempts to balance the protection of a child from prejudicial misidentification with the State's interest in prompt investigation. A child who is in custody is entitled to have counsel present at a lineup, even prior to the filing of a delinquency petition, unless exigent circumstances exist and delay to provide counsel would unduly interfere with an expeditious investigation. Blue v. State, 558 P.2d 636 (Alaska 1977); People v. Jackson, 391 Mich. 323, 217 N.W.2d 22 (Mich. 1974); Commonwealth v. Richman, 238 Pa. Super. 413, 357 A.2d 585 (1976). Once an investigation proceeds beyond an immediate on-the-scene show-up, and especially once the child is in custody, there are no compelling law enforcement exigencies that offset the dangers of prejudice to the child. Since youth in custody already have a Miranda right to counsel, 384 U.S. 436 (1966), the delay involved in securing counsel will be a matter of hours at most and if conditions require immediate identification without even minimal delay or if counsel cannot be present within reasonable time, such existent circumstances will justify proceeding without counsel. People v. Bustamante, 30 Cal 3d 88, 634 P.2d 927 (Cal. 1981).

Minn.R.Juv.P. 5.07 implements Minn.Stat. § 629.725 (Supp. 1995) by providing that, in addition to giving notice to the child, child's counsel, prosecuting attorney, child's parent(s), legal guardian or legal custodian and spouse of the child, the court administrator must make a reasonable and good faith effort to give notice of the time and place of the detention hearing to the victim if the child is charged with a crime of violence against a person or attempting a crime of violence against a person. If the victim is deceased or incapacitated, the victim's family must receive notice. If the victim is a minor, the victim's parent or guardian must receive notice. Minn.Stat. § 629.725 (Supp. 1995). "Crime of violence" has the meaning given it in Minn.Stat. § 624.712, subd. 5 (Supp. 1995), and also includes gross misdemeanor violations of Minn.Stat. § 609.224 (Supp. 1995), and nonfelony violations of Minn.Stat. §§ 518B.01 (Supp. 1995), 609.2231 (1994), 609.3451 (Supp. 1995), 609.748 (Supp. 1995), and 609.749 (Supp. 1995). Id.

RULE 6. CHARGING DOCUMENT

RULE 6.01 GENERALLY

A charging document is a petition, tab charge or a citation.

RULE 6.02 TAB CHARGE OR CITATION

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

Subd. 2. Filing. Before a tab charge or citation may be filed with the court by the peace officer or attendance officer who issued the charges, it shall be endorsed by the prosecuting attorney to permit screening for diversion programs. Filing a tab charge or citation gives the juvenile court jurisdiction over the matter.

Subd. 3. Contents of Tab Charge or Citation. Tab charges or citations shall contain:

- (A) the name, address, and date of birth of the child;
- (B) the name and address of the parent, legal guardian or legal custodian of the child;
- (C) the offense charged and a reference to the statute or local ordinance which is the basis for the charge;
- (D) the time and place and county of the alleged offense.

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

RULE 6.03 PETITION

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

Subd. 2. Filing. Each petition shall be signed by the prosecuting attorney before it is

filed with the court. The signature of the prosecuting attorney shall be an acknowledgement that the form of the petition is approved and that reasonable grounds exist to support the petition. A delinquency petition may be filed without the prosecutor's signature if the prosecutor is unavailable and a judge determines that filing and the issuance of process should not be delayed.

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

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

Subd. 4. Separate Counts. A petition may allege separate counts, whether the alleged delinquent acts arise out of the same or separate behavioral incidents.

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

- (A) a concise statement alleging that the child is a juvenile petty offender or a juvenile traffic offender;
- (B) the name, address, date of birth, and for juvenile traffic offenders, the drivers license number of the child, if known;
- (C) the name and address of the parent(s), legal guardian, or legal custodian of the child;
- (D) a description of the offense charged and reference to the statute or ordinance which is the basis for the charge;
- (E) the applicable Minnesota Offense Code (MOC);
- (F) the date, county, and place of the alleged offense.

RULE 6.04 AMENDMENT

Subd. 1. Permissive. A charging document may be amended by order of the court at any time:

- (A) before the introduction of evidence at the trial by motion of the prosecuting attorney;
- or
- (B) after the commencement of the trial with consent of the child and prosecuting attorney; or
 - (C) after trial but before a finding that the allegations of the charging document have been proved, upon motion of the prosecuting attorney, if no additional or different offense is

alleged and if substantial rights of the child are not prejudiced.

Amendments shall be granted liberally in the interest of justice and the welfare of the child. If the court orders a petition amended, additional time may be granted to the child or prosecuting attorney to adequately prepare for and ensure a full and fair hearing.

Subd. 2. Prohibited.

(A) A charging document alleging a child is delinquent shall not be amended to allege a child is in need of protection or services.

(B) A charging document alleging a juvenile petty or traffic offense shall not be amended to allege the child is delinquent.

(C) A petition alleging that a child is in need of protection or services shall not be amended to allege a delinquency, petty offense or juvenile traffic offense.

RULE 6.05 PROBABLE CAUSE

Subd. 1. Establishing Probable Cause. The facts establishing probable cause may be set forth in writing in the charging document or police reports may be attached to the charging document. If police reports are attached to the charging document to establish probable cause, the child shall have the right to demand a statement establishing probable cause with specificity. Once demanded, the prosecuting attorney shall have ten (10) days to file with the court and serve on opposing counsel, the specific statement of probable cause. Probable cause may also be presented by sworn affidavits attached to a charging document or by sworn testimony presented to the court. If testimony is presented, a verbatim record of the proceedings shall be made and a transcript of the proceedings prepared and filed with the court.

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

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

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

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

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

Subd. 3. Dismissal. The court shall dismiss a charging document when a showing of probable cause has not been made. A dismissal for failure to show probable cause shall not prohibit the filing of a new charging document and further proceedings on the new charging document.

RULE 6.06 PROCEDURE ON FILING A CHARGING DOCUMENT WITH THE COURT

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

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

Comment--Rule 6

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

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

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

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

Minn.R.Juv.P. 6.03, subd. 2 provides that a petition shall be signed by the prosecuting attorney before it is filed with the court. Minn.Stat. § 260.131 subd. 1 (1994) provides that any reputable person having knowledge of a child who is a resident of this state, who appears to be

delinquent, may petition the juvenile court. Minn.R.Juv.P. 6.03, subd. 3 sets forth the necessary contents of the petition.

RULE 7. ARRAIGNMENT

RULE 7.01 APPLICATION

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

RULE 7.02 GENERALLY

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

RULE 7.03 TIMING

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

Subd. 1. Child in Custody. The child in custody may be arraigned at a detention hearing and shall be arraigned no later than five (5) days after the detention hearing. The child has the right to have a copy of the charging document for three (3) days before being arraigned.

Subd. 2. Child Not in Custody. The child not in custody shall be arraigned within twenty (20) days after the child has been served with the charging document. The child has the right to have a copy of the charging document for three (3) days before being arraigned.

RULE 7.04 HEARING PROCEDURE

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

- (A) verify the name, age and residence of the child who is charged;
- (B) determine whether all necessary persons are present and identify those present for the record;
- (C) determine whether notice requirements have been met and if not, whether the affected persons waive notice;
- (D) determine whether the child is either represented by counsel or waives counsel in the manner provided by Minnesota Rules of Juvenile Procedure 3;
- (E) if the child appears without counsel, and the court determines the child has properly waived the child's right to counsel, the court shall advise the child of all trial rights and other rights provided by these rules;

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

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

Subd. 2. Reading of Allegations of Charging Document. Unless waived by the child, the court shall read the allegations of the charging document to the child and determine that the child understands them, and if not, provide an explanation.

Subd. 3. Motions. The court shall hear and make findings on any motions regarding the sufficiency of the charging document, including its adequacy in stating probable cause of charges made, and the jurisdiction of the court, without requiring the child to plead guilty or not guilty to the charges stated in the charging document. A challenge on probable cause shall not delay the setting of trial proceedings in cases where the child has demanded a speedy trial.

Subd. 4. Response to Charging Document. After considering the wishes of the parties to proceed later or at once, the court may continue the arraignment without requiring that the child plead guilty or not guilty to charges stated in the charging document.

Comment--Rule 7

Minn.R.Juv.P. 7.04, subd. 1 (G) and Minn.R.Juv.P. 3.03 regarding advising children of the perils of dual representation are patterned after Minn.R.Crim.P. 17.03.

RULE 8. PLEAS

RULE 8.01 APPLICATION

This rule is not applicable to proceedings on juvenile petty or juvenile traffic offenses, which are governed by Minnesota Rules of Juvenile Procedure 17. Pleas in extended jurisdiction juvenile proceedings shall be pursuant to Minnesota Rules of Criminal Procedure 15.

RULE 8.02 GENERALLY

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

RULE 8.03 PLEA OF NOT GUILTY WITHOUT APPEARANCE

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

RULE 8.04 PLEA OF GUILTY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) could give the child further information and advice on his rights and on the choice to admit guilt or to deny charges in the petition; and

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

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

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

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

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

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

Subd. 3. Plea to a Lesser Offense or a Different Offense. With the consent of the prosecuting attorney and the approval of the court, the child shall be permitted to enter:

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

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

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

Subd. 4. Acceptance or Nonacceptance of Plea of Guilty. The court shall make a finding within fifteen (15) days of a plea of guilty:

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

(B) that the plea has not been accepted.

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

RULE 9. SETTLEMENT DISCUSSIONS AND PLEA AGREEMENTS

RULE 9.01 GENERALLY

In cases in which it appears that it would serve the interests of the public in the effective administration of juvenile justice under the principles set forth in this rule, the prosecuting attorney may engage in settlement discussions for the purposes of reaching a settlement agreement. If the child is represented, the prosecuting attorney shall engage in settlement discussions only through the child's counsel.

RULE 9.02 RELATIONSHIP BETWEEN THE CHILD AND THE CHILD'S COUNSEL

The child's counsel shall conclude a settlement agreement only with the consent of the child and shall ensure that the decision to enter a guilty plea is ultimately made by the child.

RULE 9.03 DISCLOSURE OF SETTLEMENT AGREEMENT

If a settlement agreement has been reached which contemplates a guilty plea, the court shall require the disclosure of the agreement and the reasons for it before the plea. The court shall reject or accept the plea on the terms of the settlement agreement. The court may postpone its acceptance or rejection until it has received the results of a pre-disposition report. If the court rejects the settlement agreement, it shall advise the parties in open court and then ask the child to either affirm or withdraw the plea.

RULE 9.04 SETTLEMENT DISCUSSIONS AND AGREEMENTS NOT ADMISSIBLE

If the child enters a guilty plea which is not accepted or which is withdrawn, neither the settlement discussions, nor the settlement agreement, nor the plea shall be received in evidence against or in favor of the child in any subsequent proceeding against the child.

RULE 10. DISCOVERY

RULE 10.01 SCOPE AND APPLICATION

Minnesota Rules of Juvenile Procedure 10 applies to discovery for delinquency proceedings, certification hearings and extended jurisdiction juvenile proceedings and prosecutions. Pursuant to Minnesota Rules of Juvenile Procedure 17.10, this rule may apply, in the discretion of the court, to juvenile petty and juvenile traffic proceedings. The discovery procedures provided for by this rule do not exclude other lawful methods available for obtaining evidence. Pursuant to Minnesota Rules of Juvenile Procedure 1.01, references in this rule to "child's counsel" include the child who is proceeding pro se.

RULE 10.02 EVIDENCE AND IDENTIFICATION DISCLOSURE

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

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

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

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

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

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

RULE 10.03 NOTICE OF ADDITIONAL OFFENSES

The prosecuting attorney shall advise child's counsel of evidence of any additional offenses that may be offered at the trial under any exclusionary rule exceptions. Such additional acts shall be described with sufficient particularity to enable the child to prepare for the trial. The notice need not include offenses for which the child has been previously prosecuted, or that may be offered in rebuttal of character witnesses for the child or as a part of the occurrence or episode out of which the charges against the child arose. Notice of additional offenses shall be given at or before the pretrial or Omnibus hearing or as soon after those hearings as the offenses

become known to the prosecutor. If there is no pretrial or Omnibus hearing, the notice shall be given at least seven (7) days before the trial.

RULE 10.04 DISCLOSURE BY PROSECUTING ATTORNEY

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

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

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

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

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

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

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

(G) *Scope of the Prosecuting Attorney's Obligations.* The prosecuting attorney's

obligations under this rule extend to material and information in the possession or control of members of the prosecuting attorney's staff and of any others who have participated in the investigation or evaluation of the matter and who report to the prosecuting attorney's office.

Subd. 2. Disclosure Upon Order of Court. Upon motion of the child's counsel, the court at any time before trial may require the prosecuting attorney to disclose to the child's counsel any information requested that is relevant to guilt, innocence or culpability of the child. If the motion is denied, the court upon application of the child shall inspect and preserve any relevant information.

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

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

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

(C) *Prosecution Witnesses Under Prosecuting Attorney's Certificate.* The information relative to the witnesses and persons described in Minnesota Rules of Juvenile Procedure 10.04, subd. 1(A) and (B), shall not be subject to disclosure if approved by the court when the prosecuting attorney files a written certificate with the court that to do so may subject the witnesses or persons or others to physical harm or coercion, provided, however, that non-disclosure under this rule shall not extend beyond the time the witnesses are sworn to testify.

RULE 10.05 DISCLOSURE BY CHILD

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

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

(B) *Reports of Examinations and Tests.* The child's counsel shall disclose and permit the prosecuting attorney to inspect and copy any results or reports of physical or mental examinations, scientific tests, experiments and comparisons made in connection with the particular matter within the possession or control of the child which the child intends to

introduce in evidence at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing or which were prepared by a witness whom the child intends to call at the trial or reference hearing when the results or reports relate to the testimony of the witness.

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

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

(2) Witnesses for the Child. The child's counsel shall provide the prosecuting attorney with the names and addresses of persons whom the child intends to call as witnesses at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing together with their prior record of adult convictions, any prior record of proven allegations of delinquency and any prior delinquency adjudications within the actual knowledge of the child's counsel.

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

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

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

Subd. 2. Disclosure Upon Order of Court.

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

- (1) appear in a line-up;
- (2) speak for identification by witnesses to an offense or for the purpose of taking voice prints;
- (3) be fingerprinted or permit palm prints or footprints to be taken;

- (4) permit measurements of the child's body to be taken;
- (5) pose for photographs not involving re-enactment of a scene;
- (6) permit the taking of samples of blood, hair, saliva, urine and other materials of the child's body which involve no unreasonable intrusion;
- (7) provide specimens of handwriting; or
- (8) submit to reasonable physical or medical inspection of the child's body.

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

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

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

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

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

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

RULE 10.06 REGULATION OF DISCOVERY

Subd. 1. Investigations Not to be Impeded.

(A) *Prosecuting Attorney.* The prosecuting attorney or agents for the prosecuting attorney shall not advise persons having relevant material or information to refrain from discussing the case with the child's counsel or from showing opposing counsel any relevant materials nor shall they otherwise impede investigation of the case by the child's counsel.

(B) *Child, Child's Counsel or Agents for Child's Counsel.* The child, child's counsel, or agents for the child or child's counsel shall not advise persons having relevant material or information to refrain from discussing the case with opposing counsel or their agents or from showing opposing counsel any relevant materials nor shall they otherwise impede opposing counsel's investigation of the case except the child's counsel may:

- (1) advise the child that the child need not talk to anyone, and
- (2) advise the child's parent(s), legal guardian and legal custodian that they may refrain from discussing any relevant material or information obtained as a result of privileged communication between the child and child's counsel.

Subd. 2. Continuing Duty to Disclose. If, after compliance with any discovery rule or order, the prosecuting attorney or the child's counsel discovers additional material, information or witnesses subject to disclosure, the prosecuting attorney or the child's counsel shall promptly notify the opposing side of the existence of the additional material or information and the identity of the witnesses. The prosecuting attorney and the child's counsel have a continuing duty at all times before and during trial to supply the materials and information required by these rules.

Subd. 3. Time, Place and Manner of Discovery and Inspection. An order of the court permitting discovery shall specify the time, place and manner of making the discovery and inspection permitted and may prescribe such terms and conditions as are just.

Subd. 4. Custody of Materials. Any materials furnished to the prosecuting attorney or the child's counsel under discovery rules or court orders shall remain in the custody of the prosecuting attorney or the child's counsel and shall be used only for the pending case and shall be subject to such other terms and conditions as the court may prescribe.

Subd. 5. Protective Orders. Upon a showing of reasonable cause, the court may at any time order that specified disclosures be restricted or deferred or make such other order as is appropriate. However, all materials and information to which the prosecuting attorney or the child's counsel is entitled must be disclosed in time to afford the opportunity to make beneficial use of it.

Subd. 6. Excision. If only a portion of materials are discoverable under these rules, that portion shall be disclosed. If material is excised pursuant to judicial order, it shall be sealed and preserved in the records of the court to be made available to the reviewing court in the event of an appeal or habeas corpus proceeding.

Subd. 7. Sanctions.

(A) *Continuance or Order.* If at any time it is brought to the attention of the court that the prosecuting attorney, the child or child's counsel has failed to comply with an applicable discovery rule or order, the court may upon motion, order discovery or inspection, grant a continuance, or enter such order as it deems just in the circumstances.

(B) *Contempt.* Any person who willfully disobeys a court order under these discovery rules may be held in contempt.

Subd. 8. Expense. If the child or the parent(s) of the child cannot afford the costs of discovery, these costs will be at public expense in whole or in part depending on the ability of the child or the parent(s) of the child to pay.

RULE 10.07 TAKING DEPOSITIONS

Subd. 1. Deposition of Unavailable Witness. Upon motion, the court may order the deposition of a prospective witness when there is a reasonable probability the testimony of the witness will be used at a trial or hearing and:

(A) there is a reasonable probability the witness will be unable to be present or to testify at the trial or hearing because of the witness' physical or mental illness, infirmity, or death; or

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

(C) there is a stipulation by counsel; or

(D) there is another reason accepted by the court.

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

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

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

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

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

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

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

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

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

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

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

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

Subd. 3. Transcription, Certification and Filing. When the testimony is fully transcribed, the person before whom the deposition was taken shall certify on the deposition that the witness was duly sworn and that the deposition is a verbatim record of the testimony given by the witness. That person shall then securely seal the deposition in an envelope endorsed with the title of the case and marked "Deposition of (here insert name of witness)" and shall promptly file it with the court in which the case is pending or send it by registered or certified mail to the court administrator thereof for filing. Upon the request of the child's counsel or the prosecuting attorney, documents and other things produced during the examination of a witness, or copies thereof, shall be marked for identification and annexed as exhibits to the deposition, and may be inspected and copied by the child's counsel and the prosecuting attorney. The person taking the deposition shall mark the exhibits, and after giving opposing counsel an opportunity to inspect and copy them, return the exhibits to the person producing them. The exhibits may then be used in the same manner as if annexed to the deposition.

Subd. 4. Failure to Appear. Failure of the child to appear after notice is given will not prohibit the deposition from being taken.

Subd. 5. Expense of Depositions. If the child or the parent(s) of the child cannot afford the costs of depositions, these costs shall be paid at public expense in whole or in part, depending on the ability of the child or the parent(s) of the child to pay.

Comment -- Rule 10

Minn.R.Juv.P. 10.02 is modeled after the Minn.R.Crim.P. 7.01. A suggested form for the notice to be provided by this rule is included in the appendix of forms, following these rules. Minn.R.Juv.P. 10.03 is modeled after Minn.R.Crim.P. 7.02 and would encompass the commonly referred to Spreigl notice derived from *State v. Spreigl*, 139 N.W.2d 167 (1965).

RULE 11. PRETRIAL CONFERENCE

RULE 11.01 TIMING

The court, in its discretion or upon motion of the child's counsel or the prosecuting attorney, may order a pretrial conference. Where there has been no pretrial conference, pretrial issues and motions shall be heard immediately before trial unless the court orders otherwise for good cause.

RULE 11.02 EVIDENTIARY AND OTHER ISSUES

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

Comment--Rule 11

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

RULE 12. OMNIBUS HEARING

RULE 12.01 SCHEDULING OF OMNIBUS HEARING

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

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

RULE 12.02 REASSIGNMENT OF FACT FINDER

If the court suppresses evidence as the result of an omnibus hearing held before trial, a new judge shall be assigned to preside at a court trial, unless the parties agree otherwise.

RULE 12.03 SCHEDULING OF TRIAL

If a demand for speedy trial was made, the omnibus hearing will not extend the time for trial unless the court finds good cause for continuance of the trial date. Where a new judge is to be assigned because of a ruling to suppress evidence, that shall be considered good cause to continue the trial date for a reasonable time.

Comment--Rule 12

When the same judge is assigned to determine the admissibility of evidence in a suppression hearing and the guilt of the juvenile in the same proceeding, the juvenile's basic right to a fair trial by an impartial tribunal with a determination of guilt based on admissible evidence may be compromised. E.g., *In re J.P.L.*, 359 N.W.2d 622 (Minn. Ct. App. 1984). Continuances of trial beyond a speedy trial demand are not recommended. However, when a suppression ruling requires assignment of a neutral fact finder for the court trial, the child's right to a fair trial will justify a short continuance.

RULE 13. TRIALS

RULE 13.01 PURPOSE AND APPLICATION

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

RULE 13.02 COMMENCEMENT OF TRIAL

Subd. 1. For a Child in Detention. A trial shall be commenced within thirty (30) days from the date of a demand for a speedy trial unless good cause is shown why the trial should not be commenced within that time.

Subd. 2. For a Child Not in Detention. A trial shall be commenced within sixty (60) days from the date of a demand for a speedy trial unless good cause is shown why the trial should not be held within that time.

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

Subd. 4. Dismissal. Unless there is good cause shown for the delay, the charging document shall be dismissed without prejudice if the trial has not commenced within the time set forth above and the court has not granted a continuance. Good cause may include reassignment of the fact finder following suppression of evidence at an omnibus hearing pursuant to Minnesota Rules of Juvenile Procedure 12.02 or after the child removes a judge pursuant to Minnesota Rules of Juvenile Procedure 22.03.

Subd. 5. Effect of Mistrial; Order For New Trial. Upon a declaration of a mistrial, or an order of the trial court or a reviewing court granting a new trial, a new trial before a new judge shall be commenced within fifteen (15) days unless good cause is shown and the court grants a continuance.

RULE 13.03 TRIAL

Subd. 1. Initial Procedure. At the beginning of the trial, if the court has not previously determined the following information at a prior hearing, 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; and
- (C) determine whether notice requirements have been met and if not whether the affected persons waive notice.

Subd. 2. Order of Trial. The order of the trial shall be as follows:

(A) the prosecuting attorney may make an opening statement, confining the statement to the facts that it expects to prove;

(B) the child's counsel may make an opening statement, after the prosecutor's opening statement or may reserve the opening statement until immediately before offering the defense evidence. The statement shall be confined to a statement of the defense and the facts expected to be proved;

(C) the prosecuting attorney shall offer evidence in support of the charging document;

(D) the child's counsel may offer evidence in defense of the child;

(E) the child's counsel and the prosecuting attorney shall have the right to cross-examine witnesses;

(F) the prosecuting attorney may offer evidence in rebuttal of the defense evidence, and the child's counsel may then offer evidence in rebuttal of the prosecuting attorney rebuttal evidence. In the interests of justice the court may permit either the prosecuting attorney or the child's counsel to offer evidence upon the original case;

(G) at the conclusion of the evidence, the prosecuting attorney may make a closing argument; and

(H) the child's counsel may make a closing argument.

RULE 13.04 EVIDENCE

The court shall admit only such evidence as would be admissible in a criminal trial.

RULE 13.05 USE OF DEPOSITIONS AT TRIAL

Subd. 1. Unavailability of Witness.

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

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

- (B) the person offering the deposition has been unable to procure the attendance of the witness by subpoena, order of the court, or other reasonable means; or
- (C) there is a stipulation by counsel; or
- (D) for any other reason accepted by the court.

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

Subd. 2. Inconsistent Testimony. Any deposition may be used by the child's counsel or the prosecuting attorney for the purpose of contradicting or impeaching the testimony of the deponent when they appear as a witness.

Subd. 3. Substantive Evidence. A deposition may be used as substantive evidence so far as otherwise admissible under the rules of evidence, if the witness refuses to testify despite an order of the court to do so or if the witness gives testimony at the trial or hearing which is inconsistent with the deposition.

RULE 13.06 STANDARD OF PROOF

The allegations in the charging document must be proved beyond a reasonable doubt.

RULE 13.07 JOINT TRIALS

Subd. 1. Generally. When two or more children are jointly charged with any offense, they may be tried separately or jointly in the discretion of the court. Where the offense is a felony, the court shall consider the nature of the offense charged, the impact on the victim, the potential prejudice to each child, and the interests of justice before ordering a joint trial. A child in a joint trial shall be found guilty or not guilty in the same manner as a child tried separately.

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

Subd. 3. Severance Because of Another Child's Out-of-Court Statement. Where one child's out-of-court statement refers to, but is not admissible against another child and those children may otherwise be tried jointly, the child against whom the statement is not admissible may move for severance. If the prosecuting attorney intends to offer the statement as evidence in its case in chief, the court shall require the prosecuting attorney to elect one of the following options:

- (A) a joint trial at which the statement is not received in evidence;
- (B) a joint trial at which the statement is received in evidence only after all references to the child making the motion have been deleted, if admission of the statement with the deletions will not prejudice that child; or

(C) severance.

Subd. 4. Severance During Trial. If the court determines severance is necessary to achieve a fair determination of the guilt or innocence of one or more of the children in a joint trial, the court shall order severance upon a finding of manifest necessity or with the consent of the child to be tried separately.

RULE 13.08 JOINDER AND SEVERANCE OF OFFENSES

Subd. 1. Joinder of Offenses. When the child's conduct constitutes more than one offense, each such offense may be charged in the same charging document in a separate count. The court, upon the prosecuting attorney's motion, may order joinder of offenses if the offenses could have been but were not joined in a single charging document. In extended jurisdiction juvenile cases, the child has the same right as an adult to sever offenses for separate trial on each offense.

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

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

RULE 13.09 FINDINGS

Within seven (7) days of the conclusion of the trial, the court shall find that the allegations in the charging document have or have not been proved beyond a reasonable doubt. The order finding that the allegations of the charging document have been proved shall also state the child's name and date of birth; and the date and county where the offense was committed. The court shall dismiss the charging document if the allegations have not been proved. Findings may be made on the record, but must be followed up in writing within the seven (7) days. For good cause, the court may extend the time for filing written findings for an additional seven (7) days.

RULE 13.10 FURTHER PROCEEDINGS

If the court makes a finding that the allegations of the charging document have been

proved, the court shall hold dispositional proceedings pursuant to Minnesota Rules of Juvenile Procedure 15.

Comment--Rule 13

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

If the trial has not commenced within the thirty (30) days or a continuance has not been granted upon a showing of good cause for a child held in detention, the child shall be released subject to nonmonetary release conditions that the court may require. The trial must then commence within 60 days of the date of the demand for a speedy trial and not 60 days from the child's release.

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

Minn.R.Juv.P. 13.07 is modeled after Minn.R.Crim.P. 17.03, subds. 2 and 3. Minn.R.Juv.P. 13.08 is modeled after Minn.R.Crim.P. 17.03, subds. 1, 3 and 4. Joint trials should be discouraged where one or more of the children is without counsel.

RULE 14. CONTINUANCE FOR DISMISSAL

RULE 14.01 AGREEMENTS PERMITTED

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

Subd. 2. Additional Conditions. Subject to the court's approval after consideration of the victim's views and upon a showing of substantial likelihood that the allegations could be proved and that the benefits to society from rehabilitation outweigh any harm to society from suspending the juvenile proceeding, the agreement may specify one or more of the following additional conditions to be observed by the child during the period of suspension:

(A) that the child not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the allegations are based;

(B) that the child participate in a supervised rehabilitation program, which may include treatment, counseling, training, and education;

(C) that the child make restitution in a specified manner for harm or loss caused by the offense alleged;

(D) that the child perform specified community service; and

(E) that the child pay court costs.

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

RULE 14.02 COURT APPROVAL; FILING OF AGREEMENT; RELEASE

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

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

RULE 14.03 MODIFICATION OF AGREEMENT

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

RULE 14.04 TERMINATION OF AGREEMENT; RESUMPTION OF PROCEEDINGS

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

Subd. 2. Upon Order of Court. The court may order the agreement terminated and the juvenile proceeding resumed if, upon motion of the prosecuting attorney stating facts supporting the motion and upon hearing, the court finds that:

(A) the child or child's counsel misrepresented material facts affecting the agreement, if the motion is made within six months after the date of the agreement; or

(B) the child has committed a material violation of the agreement, if the motion is made not later than one month after the expiration of the period of suspension specified in the agreement.

RULE 14.05 EMERGENCY ORDER

The court by warrant may direct any officer authorized by law to bring the child forthwith before the court for the hearing of the motion if the court finds from affidavit or testimony that:

(A) there is probable cause to believe the child committed a material violation of the agreement; and

(B) there is a substantial likelihood that the child otherwise will not attend the hearing.

In any case the court may issue a summons instead of a warrant to secure the appearance of the child at the hearing.

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

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

RULE 14.07 TERMINATION OF AGREEMENT; DISMISSAL

If no motion by the prosecuting attorney to terminate the agreement is pending, the agreement is terminated and the charging document shall be dismissed by order of the court one month after expiration of the period of suspension specified by the agreement. If such a motion is then pending, the agreement is terminated and the petition or tab charge shall be dismissed by order of the court upon entry of a final order denying the motion. Following a dismissal under this subdivision no further juvenile proceedings may be brought against the child for the offense involved.

RULE 14.08 TERMINATION AND DISMISSAL UPON SHOWING OF REHABILITATION

The court may order the agreement terminated, dismiss the juvenile proceedings, and bar further juvenile proceedings on the offense involved if, upon motion of a party stating facts supporting the motion and opportunity to be heard, the court finds that the child has committed no later offenses as specified in the agreement and appears to be rehabilitated.

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

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

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

RULE 14.10 COURT AUTHORITY TO DISMISS

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

Comment--Rule 14

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

The Minnesota Supreme Court's Juvenile Rules Advisory Committee discovered that many juvenile court practitioners did not appreciate the limited benefits of withholding adjudication (now designated "continuance without adjudication") and were inadvertently misrepresenting its benefits to juveniles. See Comment to Minn.R.Juv.P. 15. Many practitioners were, in effect, treating withholding of adjudication as a continuance for dismissal or pretrial diversion, similar to Minn.R.Crim.P. 27.05. In order to avoid future misuse of the continuance without adjudication and allow juvenile court practitioners the benefits of continuance for dismissal, Minn.R.Crim.P. 27.05 was incorporated into the juvenile rules. Because there is no finding that the allegations of the charging document have been proved in a continuance for dismissal, the offense should not count towards a juvenile's future criminal history score under the sentencing guidelines.

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

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

Minn.R.Juv.P. 14 specifies the procedure to be followed when the child, child's counsel and prosecuting attorney agree to a continuance for dismissal. The rule in no way limits the court's inherent authority to order a continuance for dismissal of its own volition without the agreement of the parties. See State v. Krotzer, 531 N.W.2d 862 (Minn. Ct. App. 1995) pet. for rev. granted (Minn. July 20, 1995).

RULE 15. DELINQUENCY DISPOSITION

RULE 15.01 GENERALLY

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

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

RULE 15.02 TIMING

Subd. 1. Hearing. After the court finds that charges in the charging document have been proved, the court may conduct a disposition hearing immediately or continue the matter for a disposition hearing at a later time.

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

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

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

Subd. 3. Delay. For good cause, the court may extend the time period to enter a dispositional order for one additional period of thirty (30) days for a child not held in detention or fifteen (15) days for a child held in detention. Except in extraordinary circumstances, if the court fails to enter a dispositional order for a child held in detention within the time limits prescribed by this rule, the child shall be released from detention. Unless otherwise agreed by the parties and the court, if the court fails to make a disposition within seventy-five (75) days of the finding that the allegations have been proved, the court loses jurisdiction to make a disposition on those charges.

Subd. 4. Transfer of File. If the matter is to be transferred to the child's county of residence for disposition, the court shall direct the court administrator to transfer the file to the child's home county within five (5) days of the finding that the offense(s) charged have been proved. Venue transfers in juvenile court are governed by Minnesota Statutes § 260.121. For convenience of the participants, the court which accepts a plea may determine the disposition

for the court which will supervise the child's probation, if the transferring court has conferred with the receiving court and there is agreement regarding the disposition.

RULE 15.03 PREDISPOSITION REPORTS

Subd. 1. Investigations and Evaluations. The court may order an investigation of the personal and family history and environment of the child, and medical, psychological or chemical dependency evaluations of the child:

(A) at any time after the charges in the charging document have been proved; or

(B) with the consent of the child, child's counsel, if any, and the parent(s), legal guardian or legal custodian of the child, before the charges in the charging document have been proved.

Subd. 2. Placement. With the consent of the child at any time or without consent of the child after the delinquency charges of a charging document pursuant to Minnesota Statutes, section 260.015, subd. 5(a)(1) or (2) have been proved, the court may place the child with the consent of the Commissioner of Corrections in an institution maintained by the Commissioner of Corrections for the detention, diagnosis, custody and treatment of persons adjudicated to be delinquent in order that the investigation and evaluations may be conducted pursuant to Minnesota Rules of Juvenile Procedure 15.03, subd. 1.

Subd. 3. Advisory. The court shall advise the child, the child's counsel, the prosecuting attorney and the child's parent(s), legal guardian or legal custodian and their counsel present in court that a predisposition investigation is being ordered, the nature of the evaluations to be included and the date when the reports resulting from the investigation are to be filed with the court.

Subd. 4. Filing and Inspection of Reports. The person making the report shall file the report twenty-four (24) hours prior to the time scheduled for the disposition hearing and the reports shall be available for inspection and copying by the child's counsel, the prosecuting attorney and counsel for the parent(s), legal guardian or legal custodian of the child. When the child or the child's parent(s), legal guardian or legal custodian are not represented by counsel, the court may limit the inspection of reports by the child or child's parent(s), legal guardian or legal custodian if the court determines it is in the best interest of the child.

RULE 15.04 HEARING

Subd. 1. Procedure. Disposition hearings shall be separate from the hearing at which the charges are proved and may be held immediately following that hearing. Disposition hearings shall be conducted in a manner designed to facilitate opportunity for all participants to be heard. The child and counsel for the child, if any, shall appear at all disposition hearings.

The child's parents and their counsel, if any, may also participate in the hearing. The child has the right of allocution at the disposition hearing, prior to any disposition being imposed.

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

RULE 15.05 DISPOSITIONAL ORDER

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

- (A) adjudicate the child delinquent pursuant to Minnesota Statutes § 260.185, subd. 1; or
- (B) continue the case without adjudicating the child delinquent and order a disposition pursuant to Minnesota Statutes § 260.185, subd. 1(a) or (b).

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

Subd. 2. Considerations; Findings.

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

- (1) why the best interests of the child are served by the disposition ordered;
- (2) what alternative dispositions were recommended to the court and why such recommendations were not ordered; and
- (3) if the disposition changes the place of custody of the child,
 - (a) the reasons why the best interests of the child are not served by preserving the child's present custody; and
 - (b) suitability of the placement, taking into account the program of the placement facility and assessment of the child's actual needs.

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

- (1) Necessity. It is arbitrary and unjust to impose a disposition that is not necessary to restore law abiding conduct. Considerations bearing on need are:
 - (a) Public Safety. The risk to public safety, taking into account:
 - (i) the seriousness of the alleged offense in terms of community protection, including the existence of any aggravating factors recognized by the Minnesota Sentencing Guidelines, the use of a firearm, and the impact on any victim;
 - (ii) the culpability of the child in committing the alleged offense,

including the level of the child's participation in planning and carrying out the offense and the existence of any mitigating factors recognized by the Minnesota Sentencing Guidelines;

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

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

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

(2) Best Interests. A disposition must serve the best interests of the child, but this does not supersede the requirement that the disposition be necessary. The promise of benefits in a disposition, or even the suggestion that a particular disposition is best for the child, does not permit a disposition that is not necessary.

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

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

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

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

Subd. 4. Continuance without Adjudication.

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

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

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

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

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

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

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

RULE 15.06 INFORMAL REVIEW

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

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

RULE 15.07 PROBATION VIOLATION

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

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

- (1) the name, date of birth and address of the child;

- (2) the name and address of the child's parent(s), legal guardian, or legal custodian;
- (3) a description of the surrounding facts and circumstances upon which the request for revocation is based.

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

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

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

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

(1) for a child in custody, at or before the detention hearing; or

(2) for a child not in custody, within a reasonable time of the filing of the motion.

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

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

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

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

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

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

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

Subd. 4. Revocation Hearing.

(A) *Generally.* At the hearing, both the prosecuting attorney and the child shall have the right to offer evidence, present arguments, subpoena witnesses, and call and cross-examine witnesses, provided, however, that the child may be denied confrontation by the court when good cause is shown that a substantial risk of serious harm to others would exist if it were

allowed. Additionally, the child shall have the right at the hearing to present mitigating circumstances or other reasons why the violation, if proved, should not result in revocation.

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

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

(D) *Violation Proved.* If the court finds by clear and convincing evidence, or the child admits violating the terms of the dispositional order, the court may proceed as follows:

(1) order a disposition pursuant to Minnesota Statutes § 260.185; or

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

RULE 15.08 OTHER MODIFICATIONS

Subd. 1. Generally. Minnesota Rules of Juvenile Procedure 15.08 governs the procedure to be followed when any party, including the court, seeks modification of a disposition. Modification includes but is not limited to, any change in the terms of the dispositional order, including termination or extension of the order.

Subd. 2. Modification by Agreement. A disposition may be modified by agreement of all the parties, either in writing or on the record. All agreements to modify a disposition must be approved by the court, and the court may order the parties to appear at a hearing to examine the merits of the modification and verify the voluntariness of the agreement on the record.

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

Subd. 4. Written Request for Modification. If a child is not represented by counsel, the child or the child's parent may submit to the court a written request for modification and send a copy of the written request to the prosecuting attorney.

Subd. 5. Good Cause. Within ten (10) days of filing a motion or written request, the court shall determine from the written request or motion and accompanying affidavits, if any,

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

Subd. 6. Summons and Warrant.

(A) *Summons.* Notice in lieu of summons or a summons to the modification hearing shall be served upon the child, the child's counsel, the prosecuting attorney, the parent(s), legal guardian or legal custodian of the child, and any agency or department with legal custody of or supervisory responsibility over the child, pursuant to Minnesota Rules of Juvenile Procedure 25. The summons shall be personally served upon the child.

(B) *Warrant.* The court may issue a warrant for the arrest and detention of the child to compel appearance at the modification hearing only after the court has determined that the motion shows good cause pursuant to Minnesota Rules of Juvenile Procedure 15.08, subd. 5 and upon a showing by the moving party that service of a summons will be ineffectual to compel the child's appearance at the modification hearing.

Subd. 7. Hearing.

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

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

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

- (A) insufficient to restore the child to lawful conduct; or
- (B) inconsistent with the child's actual rehabilitative needs.

The modification order shall comply with Minnesota Rules of Juvenile Procedure 15.05, subsd. 2 and 3.

Comments -- Rule 15

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

Dispositional choices are enumerated in Minn.Stat. § 260.185, subsd. 1 and 1a. (1994).

Minn.R.Juv.P. 15.02, subd. 3 is intended to address the deficiency noted by various

appellate decisions that the juvenile rules do not specify a sanction for violation of the time limits in this rule. See In re the Welfare of C.T.T., 464 N.W.2d 751, 753 (Minn. Ct. App. 1991) pet. for rev. denied (Minn. Mar. 15, 1991); In re the Welfare of J.D.K., 449 N.W.2d 194, 196 (Minn. Ct. App. 1989).

Under Minn.R.Juv.P. 15.02, subd. 3, if the court violates the time limits prescribed in Minn.R.Juv.P. 15.01, subd. 2 it only loses jurisdiction to enter a dispositional order under Minn.R.Juv.P. 15.05. The order finding that the allegations have been proved is still valid.

Minn.Stat. § 260.121, subd. 2 (1994) authorizes transfer of a juvenile court file to the child's county of residence. This includes files in juvenile delinquency cases, and delinquency files include those where the delinquency petition requires commencement of extended jurisdiction juvenile proceedings under Minn.Stat. § 260.126 (Supp. 1995) and Minn.R.Juv.P. 19. See Minn.R.Juv.P. 19.06, subd. 4. When the receiving county has venue because of the child's residence under section 260.121, subd. 1 (1994), the statute provides no right of the receiving court to refuse the transfer. Upon transfer from the county of the child's residence to another county where the child is found, including the county where the offense occurred, the statute provides that the transfer is subject to the consent of the receiving court. Under the statute, the transferring court is to order a continuance and forward a certified copy of all papers filed, together with an order of transfer, to the court administrator of the receiving court. All subsequent proceedings in the transferred file must occur in the county to which the file has been transferred. Minn.R.Juv.P. 19.06, subd. 4. As a result, in extended juvenile jurisdiction proceedings, the receiving court has venue for purposes of the juvenile disposition, the stayed criminal sentence, and any subsequent proceedings for revocation of the stay of sentence. Minn.R.Juv.P. 19.08 and 19.09. The receiving court may direct the filing of a new petition (or notice to appear in certain cases specified in the statute) or may proceed by accepting prior findings of the transferring court.

The juvenile court and court personnel should make every effort to utilize culturally-specific evaluation and assessment programs whenever predisposition reports for juveniles are ordered under Minn.R.Juv.P. 15.03. The juvenile court should also keep in mind possible cultural issues and biases when evaluating predisposition reports, particularly when a culture-specific evaluation program is not available. See Minnesota Supreme Court Task Force on Racial Bias in the Judicial System, Final Report p. 46-47, 104, 108 (1994).

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

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

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

N.W.2d 187 (Minn. 1963)).

Although the child and other participants in the disposition hearing have the right to cross-examine the authors of any written report, that does not mandate that the authors appear at the disposition hearing. Counsel may subpoena the authors of written reports for purposes of cross-examination.

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

Requiring that the adjudicatory decision be deferred until the time of disposition should also eliminate the problem that arose in In re the Welfare of M.D.S., 514 N.W.2d 308 (Minn. Ct. App. 1994). There, the juvenile court entered an order finding that the allegations of the petition had been proved. The order also stated that adjudication was withheld but only for the purpose of transferring the case to the child's home county for disposition and further proceedings. The child attempted to appeal the order finding that the allegations of the petition had been proved. The appellate court held that the order was not appealable because it neither adjudicated the child delinquent nor finally determined that adjudication was withheld. Because the juvenile court is prohibited from adjudicating the child or granting a continuance without adjudication until the time of disposition under Minn.R.Juv.P. 15.05, subd. 1, it should be clear that there can be no appeal of the finding that the allegations of the petition have been proved until after the court enters a dispositional order.

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

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

Minn.Stat. § 260.185, subd. 1 (1994) requires written findings on disposition in every case. Although this statute seemingly invades the province of the judiciary to govern its own procedures, Minn.R.Juv.P. 15.05, subd. 2(A) reiterates the statutory principle.

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

a. The content of Minn.R.Juv.P. 15.05, subd. 2(B) is largely derived from Minn.Stat. § 260.011, subd. 2(c) (1994); Minn.Stat. § 260.185, subd. 1 (1994); Minn.Stat. § 260.185, subd. 1c. (Supp. 1995); In re Welfare of A.R.W. & Y.C.W., 268 N.W.2d 414, 417 (Minn. 1978) cert. den. 439 U.S. 989 (1978); In re the Welfare of D.S.E., 416 N.W.2d 772 (Minn. Ct. App. 1987) pet. for rev. denied (Minn. Feb. 17, 1988); and In re the Welfare of L.K.W., 372 N.W.2d 392 (Minn. Ct. App. 1985). See also Institute of Judicial Administration-

American Bar Association, *Juvenile Justice Standards: Standards Relating to Dispositions* (1980). This rule does not create any substantive standards or limit the development of the law but is intended to assist the court when choosing a disposition by focussing on those standards that are already part of established Minnesota law. The court is not required to make findings on each of these factors in every case, although such findings may be helpful in contentious cases.

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

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

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

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

"Withholding of adjudication" has been redesignated as "continuance without adjudication" to conform with the statutory language of Minn.Stat. § 260.185, subd. 3 (1994). Continuance without adjudication is authorized by Minn.Stat. § 260.185, subd. 3. The court must find that the allegations of the petition have been proved before it can continue a case without adjudication. *Id.* The court may not grant a continuance without adjudication in an extended juvenile jurisdiction proceeding. *Id.*

Continuance without adjudication (or withholding of adjudication) has a material affect on a child's juvenile record. Prior to 1983, the Minnesota Sentencing Guidelines assigned one criminal history point for every two felony-level "juvenile adjudications". *See* Minnesota Sentencing Guidelines II.B.4 (1982). In *State v. Peterson*, 331 N.W.2d 483 (Minn. 1983), the defendant claimed that it was error to use juvenile offenses for which there had been findings but no adjudication when calculating his criminal history score under the sentencing guidelines. The supreme court did not reach the defendant's argument but suggested that the Sentencing Guidelines Commission amend the guidelines to avoid the issue raised by defendant. *Id.* at 486.

The guidelines were subsequently amended in 1983 to assign one criminal history point for every two felony-level offenses "committed and prosecuted as a juvenile", provided the juvenile court made findings pursuant to an admission or trial. Minnesota Sentencing Guidelines II.B.4 (1994). Because Minn.Stat. § 260.185, subd. 3 requires a finding that the juvenile committed the offense alleged in the petition before the court may continue the case without an adjudication, which finding satisfies the requirements of the sentencing guidelines for counting a juvenile offense in the criminal history score, a continuance without adjudication (or withholding of adjudication) will not exclude the juvenile offense from a subsequent criminal history score. See John O. Sonsteng, et. al. 12 Minnesota Practice at 443 (1985). Continuance without adjudication may prevent the operation of some statutes which still require that the child be adjudicated delinquent. See, e.g., Minn.Stat. § 260.161, subd. 1a.(a)(1994)(report of certain juvenile offenses to BCA); Minn.Stat. § 609.3461, subd. 1(3)(1994)(provision of biological specimens for DNA analysis).

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

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

Much of Minn.R.Juv.P. 15.07 was taken from Minn.R.Crim.P. 27.04.

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

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

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

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

RULE 16. POST TRIAL MOTIONS

RULE 16.01 POST TRIAL MOTIONS

Subd. 1. Grounds. The court, on written motion of the child's counsel, may grant a new trial on any of the following grounds:

- (A) if required in the interests of justice;
- (B) irregularity in the proceedings of the court or in any court order or abuse of discretion by the court, if the child was deprived of a fair trial;
- (C) misconduct of the prosecuting attorney;
- (D) accident or surprise which could not have been prevented by ordinary prudence;
- (E) material evidence, newly discovered, which with reasonable diligence could not have been found and produced at the trial;
- (F) errors of law occurring at the trial and objected to at the time or, if no objection is required, assigned in the motion; or
- (G) the finding that the allegations of the charging document are proved is not justified by the evidence or is contrary to law.

Subd. 2. Basis of Motion. A motion for a new trial shall be made and heard on the files, exhibits and minutes of the court. Pertinent facts that would not be a part of the minutes may be shown by affidavit except as otherwise provided by these rules. A full or partial transcript of the court reporter's notes of the testimony taken at the trial or other verbatim recording thereof may be used on the hearing of the motion.

Subd. 3. Time for Motion. Notice of a motion for a new trial shall be served within fifteen (15) days after the finding that the allegations of the charging document are proved. The motion shall be heard within thirty (30) days after the finding that the allegations of the charging document are proved, unless the time for the hearing is extended by the court for good cause shown within the thirty (30) day period.

Subd. 4. Time for Serving Affidavits. When a motion for new trial is based on affidavits, they shall be served with the notice of motion. The prosecuting attorney shall have ten (10) days after such service in which to serve responsive affidavits. The period may be extended by the court upon an order extending the time for hearing under this rule. The court may permit reply affidavits.

RULE 16.02 MOTION TO VACATE THE FINDING THAT THE OF THE ALLEGATIONS OF THE PETITION OR CHARGING DOCUMENT ARE PROVED

The court, on motion of the child's counsel, shall vacate the finding that the allegations of the charging document are proved and dismiss the charging document if it fails to charge an offense or if the court was without jurisdiction of the offense charged. The motion shall be made within fifteen (15) days of the finding that the allegations of the charging document are proved or within such time as the court may fix during the fifteen (15) day period. If the motion is granted, the court shall make written findings specifying its reasons for vacating the finding that the allegations of the charging document are proved and dismissing the charging document.

RULE 16.03 JOINDER OF MOTIONS

Any motion to vacate the finding that the allegations of the charging document are proved shall be joined with a motion for a new trial.

RULE 16.04 NEW TRIAL ON COURT'S OWN MOTION

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

Comment--Rule 16

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

Minn.Stat. § 260.281 (1994) deals specially with a new trial motion ("petition [to] the court for rehearing") on the ground that new evidence has been discovered. Under Minn.R.Juv.P. 16, all new trial motions are to be served within (15) days and heard within 30 days, and these time periods begin "after the finding that the allegations of the petition are proved." Anomalously, Minn.Stat. § 260.281 (1994) permits 90 days for a rehearing petition on newly discovered evidence; but the statutory period commences when the court files its adjudication order, not when it makes its finding the petition to be proved. The Minnesota Court of Appeals found that the child is entitled to the benefits of the statute. In re Welfare of

B.D.O., 450 N.W.2d 163, 165 (Minn. Ct. App. 1990).

However, adhering to the time period prescribed under Minn.Stat. § 260.281 (1994) results in complications in the event of an appeal. Most new trial motion rights expire 15 days after the court's finding that the allegations of the petition or charging document are proved. Minn.R.Juv.P. 16.01, subd 3. By this time, because the court no longer adjudicates delinquent conduct until it orders a disposition (Minn.R.Juv.P. 15.05, subd. 1 and 21.03, subd. 1), the court will have issued its adjudication-disposition order in many (but not all) cases. Appeal rights of the child expire after the 30th day following the filing of the adjudication order or an order denying a new trial motion on grounds other than newly discovered evidence. Minn.R.Juv.P. 21.03, subd. 2(A). If Minn.Stat. § 260.281 (1994) is followed, appeal proceedings on most issues will begin and may be completed before the trial court has acted on a motion for rehearing on the ground of newly discovered evidence, rendering a motion for new trial pointless. This is contrary to the general preference of the courts to prefer new trials rather than appeals. Additionally, the time for bringing a motion for a new trial is a procedural, not a substantive matter and, as such, is a matter to be decided by the courts, not mandated by the legislature. Therefore, the time periods prescribed by Minn.R.Juv.P. 16 supersede those appearing in Minn.Stat. § 260.281 (1994).

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

RULE 17. JUVENILE PETTY OFFENDER AND JUVENILE TRAFFIC OFFENDER

RULE 17.01 SCOPE, APPLICATION AND GENERAL PURPOSE

Minnesota Rules of Juvenile Procedure 17 applies to children alleged to be juvenile petty offenders as defined by Minnesota Statutes § 260.015, subd. 21 or juvenile traffic offenders as defined by Minnesota Statutes § 260.193. The purpose of Minnesota Rules of Juvenile Procedure 17 is to provide a uniform and streamlined procedure for juvenile petty and juvenile traffic offenders which is sensitive to the fact that neither has the right to counsel at public expense.

Subd. 1. Juvenile Petty Offender. A juvenile petty offender is a child who has committed a juvenile petty offense.

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

(1) a juvenile alcohol offense pursuant to any provision of Minnesota Statutes § 340A.503 or equivalent ordinance;

(2) a juvenile controlled substance offense pursuant to Minnesota Statutes § 152.027, subd. 4 with respect to a small amount of marijuana or equivalent ordinance;

(3) a juvenile tobacco offense pursuant to Minnesota Statutes § 609.685 or equivalent ordinance;

(4) a violation of local ordinance which prohibits conduct by a child under age eighteen (18); or

(5) a misdemeanor offense other than fifth-degree assault (Minnesota Statutes § 609.224), prostitution or soliciting a prostitute (Minnesota Statutes § 609.324), third-degree arson (Minnesota Statutes § 609.563), negligent fires (Minnesota Statutes § 609.576), or indecent exposure (Minnesota Statutes § 617.23)), if

(a) the child has not been found to be a juvenile petty offender on more than two prior occasions for a violation of a misdemeanor-level offense pursuant to Minnesota Rules of Juvenile Procedure 17.01, subd. 1(A)(5) above; or

(b) the child has not been found delinquent before.

(B) *Designation as Juvenile Petty Offender by Prosecuting Attorney.* The prosecuting attorney may designate a child a juvenile petty offender despite the child's history of misdemeanor-level juvenile petty offenses under Minnesota Rules of Juvenile Procedure 17.01, Subd. 1(A)(5)(a).

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

Subd. 3. Children Under Jurisdiction of Adult Traffic Court. A sixteen (16) or

seventeen (17) year-old child alleged to have committed one of the following offenses is under the jurisdiction of adult criminal court:

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

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

RULE 17.02 ATTENDANCE AT HEARINGS AND PRIVACY

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

RULE 17.03 RIGHT TO COUNSEL

Subd. 1. Generally. A child alleged to be a juvenile petty offender or a juvenile traffic offender has the right to be represented by an attorney at any point throughout the proceedings but does not have the right to counsel at public expense except

(A) at a detention hearing;

(B) in a proceeding to determine whether the child is competent to proceed;

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

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

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

Subd. 3. Parent, Legal Guardian or Legal Custodian as Counsel. A parent, legal guardian or legal custodian may not represent the child unless licensed as an attorney.

RULE 17.04 WARRANTS

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

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

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

RULE 17.05 DETENTION

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

RULE 17.06 THE CHARGING DOCUMENT AND NOTICE OF ARRAIGNMENT

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

RULE 17.07 ARRAIGNMENT

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

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

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

(B) *Child Not in Custody.* The child not in custody shall be arraigned within twenty (20) days after the child has been served with the charging document. The child has the right to have a copy of the charging document for three (3) days before being arraigned.

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

(A) the right to remain silent;

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

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

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

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

(F) *For a Juvenile Petty Offender.*

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

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

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

Subd. 4. Reading of Allegations of Charging Document. The court shall read the allegations of the charging document to the child and determine that the child understands them, and, if not, provide an explanation.

Subd. 5. Motions. The court shall hear and make findings on any motions regarding the sufficiency of the charging document, including its adequacy in stating probable cause of the charges made and the jurisdiction of the court, without requiring the child to plead guilty or not guilty to the charges in the charging document. A challenge of probable cause shall not delay the setting of trial proceedings in cases where the child has demanded a speedy trial.

Subd. 6. Response to Charging Document. After considering the wishes of the parties to proceed later or at once, the court may continue the arraignment without requiring the child to plead guilty or not guilty to the charges stated in the charging document.

RULE 17.08 PLEAS

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

- (A) whether the child understands
 - (1) the nature of the offense alleged,
 - (2) the right to trial,
 - (3) the presumption of innocence until the prosecuting attorney proves the charges beyond a reasonable doubt,
 - (4) the right to remain silent,
 - (5) the right to testify on the child's own behalf,
 - (6) the right to confront witnesses against oneself,
 - (7) the right to subpoena witnesses,
 - (8) that the child's conduct constitutes the act admitted;
- (B) whether the child makes any claim of innocence; and
- (C) whether the plea is made freely, under no threats or promises other than those the parties have disclosed to the court.

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

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

- (A) before disposition, for any just reason; or
- (B) at any time, upon showing that withdrawal is necessary to correct a manifest injustice.

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

- (A) a plea of guilty to a lesser included offense or to an offense of a lesser degree, or
- (B) a plea of guilty to a different offense than that alleged in the charging document.

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

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

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

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

(B) that the plea has not been accepted.

If the court accepts a plea of guilty and makes a finding that the allegations in the charging document, the court shall schedule further proceedings pursuant to Minnesota Rules of Juvenile Procedure 17.13 ("Continuance for Dismissal") or 17.14 ("Adjudication and Disposition").

RULE 17.09 SETTLEMENT DISCUSSIONS AND PLEA AGREEMENTS

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

RULE 17.10 DISCOVERY

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

RULE 17.11 PRETRIAL AND OMNIBUS HEARING

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

RULE 17.12 TRIAL

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

RULE 17.13 CONTINUANCE FOR DISMISSAL

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

RULE 17.14 ADJUDICATION AND DISPOSITION

Subd. 1. Predisposition Reports. Before finding that the allegations of the charging document have been proved, the court may order an investigation of the personal and family history and environment of the child and outpatient psychological or chemical dependency evaluations of the child. The information and recommendations contained in the predisposition report(s) shall be made known to the child, child's parent(s), legal guardian or legal custodian before the disposition hearing.

Subd. 2. Adjudication and Disposition.

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

(A) *For a Juvenile Petty Offender.* Adjudicate the child a juvenile petty offender and order a disposition pursuant to Minnesota Statutes § 260.195, subsds. 3, 3a and 4.

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

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

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

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

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

(1) that, at all stages of the proceedings, the child has the right to be represented by counsel but does not have the right to counsel appointed at public expense;

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

(3) that before the revocation hearing, all evidence to be used against the child

shall be disclosed to the child and the child shall be provided access to all official records pertinent to the proceedings.

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

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

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

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

RULE 17.15 POST-TRIAL MOTIONS

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

RULE 17.16 TRANSFER TO ADULT COURT OF JUVENILE TRAFFIC MATTER

Subd. 1. On Motion of Court or Prosecuting Attorney. The court, after a hearing and on its own motion or on motion of the prosecuting attorney, may transfer a juvenile traffic offender case to adult court if makes a written order to transfer which finds that the welfare of the child or public safety would be better served under the laws relating to adult traffic matters.

Subd. 2. Method of Transfer. The court shall transfer the case by forwarding all documents in the court file to adult court together with the order to transfer.

Subd. 3. Effect of Transfer. Upon transfer, jurisdiction of the juvenile court is deemed

not to have attached and the adult shall proceed with the case as if it had never been in juvenile court.

RULE 17.17 CHILD INCOMPETENT TO PROCEED

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

RULE 17.18 APPEALS

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

RULE 17.19 GENERAL APPLICATION OF OTHER RULES

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

Comment--Rule 17

Minn.R.Juv.P. 17.01 is based upon Minn.Stat. § 260.193, subd. 2 (1994) which provides that the prosecutor may allege the child is delinquent based upon a traffic offense but the court must find as a further fact that the child is delinquent within the meaning and purpose of the laws relating to juvenile court. Minn.Stat. § 260.193, subd. 2 (1994). Such matter shall be initiated and shall proceed in the same manner as any other delinquency. *Id.*

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

Minn.R.Juv.P. 17.16 is based on Minn.Stat. § 260.193, subd. 7 (1994) which provides that the juvenile court may transfer a juvenile traffic offender case to adult court after a hearing if the juvenile court finds that the welfare of the child or public safety would be better served under the laws relating to adult traffic matters.

The right to appeal is set forth in Minn.Stat. § 260.291 (Supp. 1995).

RULE 18. CERTIFICATION OF DELINQUENCY MATTERS

RULE 18.01 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 attorney after a delinquency petition has been filed. The motion may be made at the first appearance of the child pursuant to Minnesota Rules of Juvenile Procedure 5 or 7; 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 27, and shall include a statement of the grounds supporting the certification. Within ten (10) days after the motion is made, the prosecuting attorney shall file with the court a statement of intent to prosecute the accusation if the proceedings are certified, which statement shall be signed by the prosecutor in the county which has jurisdiction over the offense. The court shall dismiss the certification motion if the statement of intent to prosecute is not timely filed.

RULE 18.02 NOTICE OF CERTIFICATION

Notice of the initial appearance under Minnesota Rules of Juvenile Procedure, 18.04 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 25.

RULE 18.03 CERTIFICATION STUDY

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

Subd. 2. Content of Reports. If the person preparing the report includes a recommendation on the court's actions, (a) the report shall address each of the public safety considerations of Minnesota Rules of Juvenile Procedure 19.05, subd. 3; and (b) the report shall address all options of the trial court under Minn. R. Juv. P. 18.06, namely, (i) certification, (ii) retention of jurisdiction for extended jurisdiction juvenile proceedings; and (iii) retention of juvenile court jurisdiction in nonpresumptive certification cases.

Subd. 3. Costs. Preparation costs and court appearance expenses for person(s) appointed by the court to conduct studies shall be paid at public expense.

Subd. 4. Filing and Access to Reports. The person(s) making a study shall file a written report with the court and provide copies to the prosecuting attorney and the child's counsel forty-eight (48) hours prior to the time scheduled for the hearing. The reports shall otherwise be confidential.

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

RULE 18.04 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 attorney or the child may the court extend the time for a hearing for another sixty (60) days. Unless the child waives the right to the scheduling of the hearing within specified time limits, if the hearing is not commenced within thirty (30) days, or within the extended period ordered pursuant to this subdivision, the child, except in extraordinary circumstances, shall be released from custody subject to such nonmonetary release conditions as may be required by the court under Minnesota Rules of Juvenile Procedure 5.

(C) *Waiver.* The child may waive the right to a certification hearing provided that the child does so knowingly, voluntarily, and intelligently on the record after being fully and effectively informed of the right to a certification hearing by counsel. In determining whether the child has knowingly, voluntarily, and intelligently waived this right the court shall look at the totality of the circumstances. These circumstances include but are not limited to: the presence of the child's parent(s), legal guardian, legal custodian or guardian ad litem; and the child's age, maturity, intelligence, education, experience, and ability to comprehend the proceedings and consequences.

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

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

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

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

record,

(C) appoint counsel, if not previously appointed,

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

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

(F) order studies pursuant to Minnesota Rules of Juvenile Procedure 18.03, 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 18.05, 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 attorney shall have the right to:

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

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

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

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

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

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

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

certification.

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

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

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

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

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

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

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

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

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

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

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

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

RULE 18.05 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 for action under the laws and court procedures controlling adult criminal violations 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 18.04 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 attorney 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 the matter, 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, either in the exercise by the court of its delinquency jurisdiction or in its jurisdiction over extended jurisdiction juvenile cases; and

(F) the dispositional options available for the child in the court's exercise of delinquency jurisdiction or in its jurisdiction over extended jurisdiction juvenile cases.

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 attorney has shown by clear and convincing evidence that the designation would serve public safety, taking into account the factors specified in Minnesota Rules of Juvenile Procedure 18.05, subd. 3. Absent this showing the case shall

proceed as a regular delinquency proceeding in juvenile court.

RULE 18.06 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 18.04, 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 18.05, 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 18.05, 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 18.07) 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 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 designation as an extended jurisdiction juvenile serves public safety under the factors listed in Minnesota Rules of Juvenile Procedure 18.05, 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 18.05, 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 19.07.

(C) *Retention of Jurisdiction by Juvenile Court.* If the court decides not to order certification or extended jurisdiction juvenile, the order shall state why certification or extended jurisdiction juvenile was not ordered with specific reference to why retention of the matter in

juvenile court serves public safety, considering the factors listed in Minnesota Rules of Juvenile Procedure 18.05, subd. 3. Further proceedings shall be held pursuant to Minnesota Rules of Juvenile Procedure 7.

(D) *Time Spent in Custody.* Upon ordering certification or retention as an extended jurisdiction juvenile proceeding, the court shall designate the time spent by the child in custody in connection with the offense or behavioral incident on which further proceedings are to occur. Such time shall be automatically deducted from a subsequent sentence in compliance with the provisions of Minnesota Rules of Criminal Procedure 27.03, subd. 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 5.

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 attorney.

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

RULE 18.07 TERMINATION OF JURISDICTION UPON CERTIFICATION

Subd. 1. Child Not in Detention. Once the court enters an order certifying a proceeding, 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 attorney shall file an appropriate adult criminal complaint at or before the time of the next appearance of the child that is stated in the certification order pursuant to Minnesota Rules of Juvenile Procedure 18.06 subd. 1(A)(4).

(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 attorney files a complaint as provided under Minnesota Rules of Criminal Procedure 2. If juvenile court jurisdiction has terminated under this subsection before an appearance of a detained child following issuance of an order certifying the case, the appearance shall constitute a first appearance in criminal proceedings as provided in the Minnesota Rules of Criminal

Procedure. If juvenile court jurisdiction has not terminated by the time a detained juvenile first appears following issuance of an order certifying, the juvenile court shall determine conditions of release in accordance with the provisions of Minnesota Rules of Criminal Procedure 5.05 and 6; for these purposes, the juvenile court petition shall serve in lieu of a criminal complaint as the charging instrument.

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

RULE 18.08 FIRST DEGREE MURDER ACCUSATION

Subd. 1. Child Ages 16 or 17. Upon the filing of a complaint or indictment charging a 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 attorney 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--Rule 18

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

Pursuant to Minn.Stat. § 260.125, subd. 3b. (1994), 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 (Supp. 1995). 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.L., 521 N.W.2d 889, (Minn. Ct. App. 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 Minn.R.Juv.P. 18.01 may be included in the motion for certification if the county which has jurisdiction over the offense is the same county where the motion for certification is filed.

Much of the text of Minn.R.Juv.P. 18.04 subd. 1(A) is taken from Minn.Stat. § 260.155 (1994).

The sanction for delay in Minn.R.Juv.P. 18.04, subd. 1(B) and 32.06, subd. 2 is modeled after Minn.R.Crim.P. 11.10. See In re Welfare of J.L.H., 446 N.W.2d 680, 681-82 (Minn. Ct. App. 1989) (order issued 66 days after hearing, 38 days after submission of written argument; because rule contains no sanction, reversal denied). See also McIntosh v. Davis, 441 N.W.2d 115 (Minn. 1989) (where alternative remedies available mandamus not appropriate to enforce time limit of Minn.R.Crim.P. 11.10 speedy trial rule).

On continuation questions under Minn.R.Juv.P. 18.04, subd. 1(B), the victim should have input but does not have the right of a party to appear and object.

Most of the waiver language in Minn.R.Juv.P. 18.04, subd. 1(C) is taken from the 1983 version of Minn.R.Juv.P. 15.03.

Minn.R.Juv.P. 18.04, 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. 18.04, subd. 3 is modeled after Minn.R.Crim.P. 11.03 and 18.06, subd. 1. The court may employ police statements for probable cause determinations in the same manner as permitted in adult proceedings under Minn.R.Crim.P. 11.03. Also note In re Welfare of E.Y.W., 496 N.W.2d 847, 850 (Minn. Ct. App. 1993) (juvenile not entitled to exclusionary hearing before decision on probable cause).

Minn.R.Juv.P. 18.04, subd. 3 and 18.06, 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. 18.04, 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. 18.04 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. Ct. 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. 18.04, 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. 18.05, 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.Crim.P. 17.01, first degree murder cases are prosecuted by an indictment, but the proceedings can begin by complaint. As a result, the prosecuting attorney can initiate a first degree murder accusation in adult court proceedings.

Minn.R.Juv.P. 18.08, subd. 2 repeats the procedural requirement stated in Minn.Stat. § 260.125, subd. 6 (1994).

RULE 19. EXTENDED JURISDICTION JUVENILE PROCEEDINGS AND PROSECUTION

RULE 19.01 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 19. 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 Attorney. The court shall commence an extended jurisdiction juvenile proceeding when a delinquency petition filed pursuant to Minnesota Rules of Juvenile Procedure 6:

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

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

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

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

RULE 19.02 NOTICE OF THE EXTENDED JURISDICTION JUVENILE PROCEEDING

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

RULE 19.03 EXTENDED JURISDICTION JUVENILE STUDY

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

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

Subd. 3. 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. 4. Filing and Access to Reports. The person(s) making a study shall file a written report with the court and provide copies to the prosecuting attorney and the child's counsel forty-eight (48) hours prior to the time scheduled for the hearing. The report shall otherwise be confidential.

Subd. 5. 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 19.04 HEARINGS ON EXTENDED JURISDICTION JUVENILE PROCEEDINGS

Subd. 1. In General.

(A) *Limited Public Access.* The court shall exclude the general public from extended jurisdiction juvenile proceedings and shall admit only those persons who, in the discretion of the court, have a direct interest in the case or the work of the court. 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 attorney or the child may the court extend the time for a hearing for another sixty (60) days. Unless the child waives the right to the scheduling of the hearing within 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 5.

(C) *Waiver.* The child may waive the right to an extended jurisdiction juvenile proceeding hearing provided that the child does so knowingly, voluntarily, and intelligently on the record after being fully and effectively informed of all rights by counsel. In determining whether the child has knowingly, voluntarily, and intelligently waived this right the court shall look at the totality of the circumstances. These circumstances include but are not limited to: the presence of the child's parent(s), legal guardian, legal custodian or guardian ad litem, the child's age, maturity, intelligence, education, experience, and ability to comprehend the proceedings and consequences.

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

Subd. 2. Initial Appearance 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 19.04, subd. 4; and a pre-hearing conference if requested, and

(F) order studies pursuant to Minnesota Rules of Juvenile Procedure 19.03, 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 attorney 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 19.07.

(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 attorney shall have the right to:

(1) present evidence;

(2) present witnesses;

(3) cross-examine witnesses; and

(4) present arguments for or against extended jurisdiction juvenile prosecution.

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

(C) *Order of Hearing.*

(1) The prosecuting attorney may make an opening statement, confining the statement to the facts expected to be proved.

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

(3) The prosecuting attorney shall offer evidence in support of extended jurisdiction juvenile prosecution.

(4) The child's counsel may offer evidence on behalf of the child.

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

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

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

(D) *Burdens of Proof.* The prosecuting attorney shall prove by clear and convincing evidence that the case meets the criteria for extended jurisdiction juvenile prosecution, pursuant to Minnesota Rules of Juvenile Procedure 19.05.

RULE 19.05 EXTENDED JURISDICTION JUVENILE PROSECUTION 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.

RULE 19.06 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 7.

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 5.

Subd. 3. Presiding Judge. The judge who presides over a contested extended

jurisdiction juvenile hearing shall not preside over a court trial in a subsequent adjudicatory proceeding regarding this offense, unless otherwise agreed by the child and the prosecuting attorney.

Subd. 4. Venue Transfer. When the court deems it appropriate, taking into account the best interest of the child or of society, or the convenient administration of the proceedings, the court may transfer venue over the case to the juvenile court of the county of the child's residence. With the consent of the receiving court, the court may also transfer the case to the juvenile court of the county where the child is found or the county where the alleged offense occurred. The transfer shall be processed in the manner provided by Minn.Stat. § 260.121. The receiving court thereafter has venue for purposes of all proceedings under Minn.R.Juv.P. 19.08 (disposition and sentencing upon conviction in extended jurisdiction juvenile proceedings) and 19.09 (revocation of stay of adult criminal sentence).

Subd. 5. Final Order. This order shall constitute a final order.

RULE 19.07 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 13.02, except the time shall run from the date of the filing of the extended jurisdictional juvenile order. The court shall schedule a hearing for the child to enter a plea to the charges. If the child pleads not guilty, the court shall schedule an omnibus hearing prior to the trial and shall also schedule the trial.

RULE 19.08 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 19.09, 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 attorney, results in a guilty plea or a conviction for an offense other than a presumptive commitment to prison under the Minnesota Sentencing Guidelines or a felony committed using a firearm, the court shall only impose one or more dispositions under Minnesota Statutes § 260.185. But if the child has plead guilty and consents, even if the plea or the conviction is for an offense other than a presumptive commitment under the guidelines, the court may also impose a stayed adult criminal sentence under Minnesota Rules of Juvenile Procedure 19.08, subd. 1.

Subd. 4. Venue. If the child's county of residence is not the same county where the offense occurred, venue of the case may be transferred as provided by Minnesota Statutes § 260.121. The conditions under which the execution of any adult sentence are stayed shall be determined by the juvenile court having jurisdiction to impose and supervise any juvenile court disposition. The stayed adult sentence may be pronounced by the judge who presided over the trial or who accepted a plea of guilty. If venue for the juvenile disposition is being transferred to the child's county of residence, prior to making the transfer, the transferring court shall prepare and file with the receiving court, a copy of the juvenile's file, including any plea and sentencing transcript.

RULE 19.09 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 upon which the request for revocation is based. The court may issue a summons instead of a warrant whenever it is satisfied that a warrant is unnecessary to secure the appearance of the probationer. 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 attorney and the probationer shall have the right to offer evidence, present arguments, subpoena witnesses, and call and cross examine witnesses, provided, however, the probationer may be denied confrontation by the court when good cause is shown that a substantial risk of serious harm to others would exist if it were allowed. Additionally, the probationer shall have the right at the revocation hearing to present mitigating circumstances or other reasons why the violation, if proved, should not result in revocation;

(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 5 and Minnesota Rules of Criminal Procedure 6.02, subds. 1 and 2. The probationer has the burden of establishing that he or she will not flee or will not be a danger to any other person or the community.

(D) *Time of Revocation Hearing.* The court shall set a date for the revocation hearing to be held within a reasonable time. If the probationer is in custody as a result of the revocation proceedings, the revocation hearing shall be held within seven (7) days. If the probationer has

allegedly committed a new offense the court may postpone the revocation hearing pending disposition of the new offense whether or not the probationer is in custody.

(E) *Record*. A verbatim record shall be made of the proceedings at the probationer's initial appearance.

Subd. 3. Revocation Hearing.

(A) *Hearing Procedures*. The hearing shall be held in accordance with the provisions of Minnesota Rules of Juvenile Procedure 19.09, subd. 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 attorney may appeal from the court's decision according to the procedure provided for appeal from a sentence by the Minnesota Rules of Criminal Procedure 28.05.

Comment--Rule 19

The determination of "presumptive prison" under the Minnesota Sentencing Guidelines should be analyzed pursuant to those guidelines.

The sanction for delay in Minn.R.Juv.P. 19.04, subd. 1(B) and 19.06, subd. 2 is modeled after Minn.R.Crim.P. 11.10. See In re Welfare of J.J.H., 446 N.W.2d 680, 681-82 (Minn. Ct. App. 1989) (order issued 66 days after hearing, 38 days after submission of written argument; because rule contains no sanction, reversal denied). See also McIntosh v. Davis, 441 N.W.2d 115 (Minn. 1989) (where alternative remedies available mandamus not appropriate to enforce time limit of Minn.R.Crim.P. 11.10 speedy trial rule).

Most of the waiver language in Minn.R.Juv.P. 19.04 subd. 1(C) is taken from the 1983

version of Minn.R.Juv.P. 15.03.

Minn.R.Juv.P. 19.04 does not address the consequences of the child's testimony at a hearing or whether it can be subsequently used against the child. See Simmons v. United States, 390 U.S. 377 (1968), or by way of impeachment 2nd State v. Christenson, 371 N.W.2d 228 (Minn. Ct. App. 1985), cf. Harris v. New York, 401 U.S. 222 (1971).

On continuation questions under Minn.R.Juv.P. 19.04, subd. 1(B), the victim should have input but does not have the right of a party to appear and object.

Much of the content of Minn.R.Juv.P. 19.04, subd. 3 is modeled after Minn.R.Crim.P. 11.03 and 18.06, subd. 1. The court may employ police statements for probable cause determinations in the same manner as permitted in adult proceedings under Minn.R.Crim.P. 11.03. Also note, In re Welfare of E.Y.W., 496 N.W.2d 847, 850 (Minn. Ct. App. 1993) (juvenile not entitled to exclusionary hearing before decision on probable cause).

Minn.R.Juv.P. 19.04, subd. 3 eliminates the need for a probable cause finding when a delinquency accusation is presented by an indictment. Accusation by indictment is uncommon, but might occur more often as a result of grand jury proceedings conducted after 1994 statutory amendments on the question of whether a child is to be accused of first degree murder in adult proceedings. See Minn.Stat. § 260.015, subd. 5 (1994).

Minn.R.Crim.P. 19.04, subd. 4(B) is consistent with case law. Because the extended jurisdiction juvenile prosecution question is dispositional in nature, strict application of the rules of evidence is thought to be inappropriate.

Following the presentation of evidence by the prosecuting attorney the child may move the court for directed relief on the grounds that the burden of proof has not been met.

Under Minn.Stat. § 260.155, subd. 4b (1994) 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 Minn.R.Crim.P. 27, and Minn.Stat. §§ 609.115 and 631.20 (1994). The court shall send a copy of this worksheet to the Minnesota Sentencing Guidelines Commission pursuant to Minn.R.Crim.P. 27.03, subd. 4(c).

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

RULE 20.01 PROCEEDING WHEN CHILD IS BELIEVED TO BE INCOMPETENT

Subd. 1. Competency to Proceed Defined.

(A) A child shall not be permitted to waive counsel if the child lacks sufficient ability to:

(1) knowingly, voluntarily, and intelligently waive the constitutional right to counsel;

(2) appreciate the consequences of the decision to proceed without representation by counsel;

(3) comprehend the nature of the charge and proceedings, the range of applicable punishments, and any additional matters essential to a general understanding of the case.

(B) A child shall not be permitted to enter a plea or be tried or sentenced for any offense if the child lacks sufficient ability to:

(1) consult with a reasonable degree of rational understanding with defense counsel; or

(2) understand the proceedings or participate in the defense due to mental illness or mental deficiency.

The court may not proceed under this rule before the child consults with counsel and the child's counsel has an opportunity to be heard by the court. Any child subject to competency proceedings shall be represented by counsel.

Subd. 2. Proceedings. The prosecuting attorney, the child's counsel or the court shall bring a motion to determine the competency of the child if there is reason to doubt the competency of the child during the pending proceedings.

The motion shall set forth the facts constituting the basis for the motion but the child's counsel shall not divulge communications in violation of the attorney-client privilege. The bringing of the motion by the child's counsel does not waive the attorney-client privilege. Any such motion may be brought over the objection of the child. Upon such motion, the court shall suspend the proceedings and shall proceed as follows:

(A) *Felony.* If the offense is a felony, the court shall determine whether there is sufficient probable cause to believe the child committed the offense charged before proceeding pursuant to this rule. If there is sufficient showing of probable cause, the court shall proceed according to this rule. If the court finds insufficient probable cause to believe the child committed the offense charged, the charging document against the child shall be dismissed.

(B) *Other Matters.* If the offense is a gross misdemeanor, misdemeanor, juvenile petty matter or juvenile traffic offense, the court having trial jurisdiction shall proceed according to this rule, or dismiss the case in the interests of justice.

(C) *Medical Examination.* If there is probable cause, the court shall proceed as follows. The Court shall suspend the proceedings and appoint at least one examiner as defined in the

Minnesota Commitment Act, Minnesota Statutes, Ch. 253B to examine the child and report to the court on the child's mental condition.

The court may not order confinement for the examination if the child is otherwise entitled to release and if the examination can be done adequately on an outpatient basis. The court may require the completion of an outpatient examination as a condition of release.

The court may order confinement for an inpatient examination for a specified period not to exceed sixty (60) days if the examination cannot be adequately done on an outpatient basis or if the child is not entitled to be released.

The court shall permit examination of the child or observation of such examination by a qualified psychiatrist, clinical psychologist or qualified physician retained and requested by the child or prosecuting attorney.

The court shall further direct the mental-health professionals to notify promptly the prosecuting attorney, the child's counsel, and the court if such mental-health professionals conclude, upon examination, that the child presents an imminent risk of serious danger to another person, is imminently suicidal, or otherwise needs emergency intervention.

(D) *Report of Examination.* Within at least sixty (60) days, the examiner shall send a written report to the judge who ordered such examination, the prosecuting attorney and the child's counsel. The report contents shall not be otherwise disclosed until the hearing on the child's competency. The report shall include:

(1) A diagnosis of the mental condition of the child.

(2) If the child is mentally ill or mentally deficient, an opinion as to:

(a) whether the child can understand the proceedings and participate in the defense;

(b) whether the child presents an imminent risk of serious danger to another person, is imminently suicidal, or otherwise needs emergency intervention;

(c) whether the child requires any treatment to attain competency and if so, the appropriate treatment alternatives by order of choice, the extent to which the child can be treated as an outpatient and the reasons for rejecting such treatment if institutionalization is recommended; and

(d) whether, with treatment, there is a substantial probability that the child will attain competency and if so, when the child is expected to attain competency and the availability of inpatient and outpatient treatment agencies or facilities in the local geographical area.

(3) A statement of the factual basis upon which the diagnosis and opinion are based.

(4) If the examination could not be conducted because the child is unwilling to participate, a statement to that effect with an opinion, if possible, as to whether the child's unwillingness was the result of mental illness or deficiency.

Subd. 3. Hearing and Determination of Competency.

(A) *Hearing and Notice.* Upon receipt of the report and notice to the parties, the court shall hold a hearing within ten (10) days on the issue of the child's competency to proceed.

(B) *Going Forward with Evidence.* If the defense moved for the examination, the defense

shall go forward first with evidence at the hearing. If the prosecuting attorney or the court on its own initiative, moved for the examination, the prosecuting attorney shall go forward with evidence unless the court otherwise directs.

(C) *Report and Evidence.* The examination report and other evidence as to the child's mental condition may be admitted at the hearing. The person who prepared the report or any individual designated by that person as a source of information for preparation of the report, other than the child or the child's counsel, is considered the court's witness and may be called and cross-examined as such by either party.

(D) *Child's Counsel as Witness.* The child's counsel may testify as to personal observations of and conversations with the child to the extent that attorney-client privilege is not violated, and continue to represent the child. The prosecuting attorney may examine the child's counsel testifying to such matter.

The court may inquire of defense counsel concerning the attorney-client relationship and the child's ability to communicate effectively with the child's counsel. However, the court may not require defense counsel to divulge communications in violation of the attorney-client privilege. The prosecuting attorney may not cross-examine the child's counsel responding to the court's inquiry.

(E) *Decision and Sufficiency of Evidence.* If the court determines that the child is competent by the greater weight of evidence, the court shall enter an order finding competency. Otherwise, the court shall enter an order finding incompetency.

Subd. 4. Effect of Finding on Issue of Competency to Proceed.

(A) *Finding of Competency.* If the court determines that the child is competent to proceed, the proceedings against the child shall resume.

(B) *Finding of Incompetency.* If the offense is a gross misdemeanor, misdemeanor, petty matter, or juvenile traffic offense, and the court determines that the child is incompetent to proceed, the matter shall be dismissed. If the offense is a felony and the court determines that the child is incompetent to proceed, the proceedings against the child shall be further suspended except as provided by Minnesota Rules of Juvenile Procedure 20.01, subd. 6.

(1) If the court determines that the child is mentally ill or deficient so as to be incapable of understanding the proceedings or participating in the defense, the court shall order any existing civil commitment continued. If the child is not under commitment, the court may order the child held at a shelter or treatment facility for up to seventy-two (72) hours and direct civil commitment proceedings be initiated.

(2) If it is determined that commitment proceedings are inappropriate and a petition has been filed alleging the child is in need of protection and services (CHIPS), the court shall order such jurisdiction be continued. If the child is not under CHIPS jurisdiction, the court may order the child held for up to seventy-two (72) hours and direct CHIPS proceedings be initiated.

(3) If it is determined that neither commitment proceedings nor CHIPS proceedings are appropriate, the child shall be released to the child's parent(s), legal guardian or legal custodian under conditions deemed appropriate to the court.

Subd. 5. Continuing Supervision by the Court in Felony Cases. The person charged

with the child's supervision, such as the head of institution to which the child is committed, shall report to the trial court on the child's mental condition and competency to proceed at least every six (6) months unless otherwise ordered. Copies of the reports shall also be sent to the prosecuting attorney and to the child's counsel.

Unless the petition against the child has been dismissed as provided by Minnesota Rules of Juvenile Procedure 20.01, subd. 6, the trial court, child's counsel and the prosecuting attorney shall be notified of any proposed institutional transfer, partial institutionalization status, and any proposed termination, discharge, or provisional discharge of the juvenile protection case. The prosecuting attorney shall have the right to participate as a party in any proceedings concerning such proposed changes in the child's commitment or status.

Subd. 6. Dismissal of Proceedings.

(A) Delinquency and extended jurisdiction juvenile proceedings shall be dismissed upon the earlier of the following:

(1) the child's nineteenth (19) birthday in the case of a delinquency, or twenty first (21) birthday if a designation or motion for extended jurisdiction juvenile proceedings is pending;

(2) for all cases except murder, the expiration of one (1) year from the date of the finding of the child's incompetency to proceed unless the prosecuting attorney, before the expiration of the one (1) year period, files a written notice of intention to prosecute the child when the child has been restored to competency. Such a notice shall extend the suspension of proceeding for one (1) year from the date of filing subject to Minnesota Rules of Juvenile Procedure 20.01, subd. 6(A).

(B) For all cases pending certification except murder, proceedings shall be dismissed upon the expiration of three (3) years from the date of the finding of the child's incompetency unless the prosecuting attorney, before the expiration of the three (3) year period, files a written notice of intention to prosecute the child when the child has been restored to competency. Murder charges shall not be dismissed based upon a finding of incompetency.

Subd. 7. Determination of Legal Issues Not Requiring Child's Participation. The fact that the child is incompetent to proceed shall not preclude the child's counsel from making any legal objection or defense that can be fairly determined without the personal participation of such child.

Subd. 8. Admissibility of Child's Statements. When a child is examined under this rule, any statement made by the child for the purpose of the examination and any evidence derived from the examination shall be admissible in evidence only at the proceedings to determine whether the child is competent to proceed.

RULE 20.02 DEFENSE OF MENTAL ILLNESS OR MENTAL DEFICIENCY AT THE TIME OF THE OFFENSE

Subd. 1. When Raised.

(A) If the child intends to raise mental illness or mental deficiency as a defense, the child shall advise the court and prosecuting attorney in writing at the omnibus hearing or no less than ten (10) days before the trial, whichever is earlier. The notice shall provide the court and prosecuting attorney with a statement of particulars showing the nature of the mental illness or mental deficiency expected to be proved and the names and addresses of witnesses expected to prove it.

(B) The court, upon good cause shown and in its discretion, may waive these requirements and permit the introduction of the defense, or may continue the hearing for the purpose of an examination in accordance with the procedures in this rule.

(C) A continuance granted for an examination will toll the speedy trial rule and the limitation on detention pending adjudication and disposition.

Subd. 2. Examination of the Child. If the defense of mental illness or mental deficiency is raised, the court shall order an examination as described in Minnesota Rules of Juvenile Procedure 20.01, subd 2(C). The court may order that the examination for competency under Minnesota Rules of Juvenile Procedure 20.01 and the Minnesota Rules of Juvenile Procedure 20.02 examination be conducted simultaneously.

Subd. 3. Refusal of the Child to be Examined. If the child does not participate in the examination so that the examiner is unable to make an adequate report to the court, the court may prohibit the child from introducing evidence of the child's mental illness or mental deficiency, may strike any such evidence previously introduced, may permit any other party to comment on and to introduce evidence of the child's refusal to cooperate to the trier of the facts, and may make any such other ruling as it deems just.

Subd. 4. Disclosure of Reports and Records of Child's Mental Illness or Mental Deficiency Examinations.

(A) *Order for Disclosure.* If a child raises the defense of mental illness or mental deficiency, the trial court, on motion of the prosecuting attorney and notice to the child's counsel may order the child to furnish either to the court or to the prosecuting attorney copies of all medical reports and hospital and medical records previously or thereafter made concerning the mental illness or mental deficiency of the child and relevant to the issue of the defense of mental illness or mental deficiency. If the copies of the reports and records are furnished to the court, the court shall inspect them to determine their relevancy. If the court determines they are relevant, they shall be delivered to the prosecuting attorney. Otherwise, they shall be returned to the child. If the child is unable to comply with the court order, a subpoena duces tecum may be issued.

(B) *Use of Reports and Records.* If an order for disclosure of reports and records under this subdivision is entered and copies are furnished to the prosecuting attorney, the reports and

records and any evidence obtained from them may be admitted in evidence only upon the issue of the defense of mental illness or mental deficiency.

Subd. 5. Report of Examination. At the conclusion of the examination, a written report of the examination shall be forwarded to the judge who ordered the examination, the prosecuting attorney and to the child's counsel. The contents of the report shall not otherwise be disclosed except as ordered by the court. The report of the examination shall contain:

(A) A diagnosis of the child's mental illness or mental deficiency as requested by the court;

(B) If so directed by the court, an opinion as to whether, because of mental illness or deficiency, the child at the time of the commission of the offense charged was laboring under such a defect of reason as not to know the nature of the act constituting the offense with which child is charged or that it was wrong;

(C) Any opinion requested by the court that is based on the examiner's diagnosis;

(D) A statement of the factual basis upon which the diagnosis and any opinion are based.

If the examination cannot be conducted by reason of the child's unwillingness to participate, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the child was the result of mental illness or deficiency.

Subd. 6. Admissibility of Evidence at Trial. No evidence derived from the examination shall be received against the child unless the child has previously made his or her mental illness or mental deficiency an issue in the case. If the child's mental illness or mental deficiency is an issue, any party may call the person who examined the child at the direction of the court to testify as a witness at the trial. The report or portions thereof may be received in evidence to impeach the testimony of the person making it.

Subd. 7. Trial. When a child is examined under Minnesota Rules of Juvenile Procedure 20.01 or Minnesota Rules of Juvenile Procedure 20.02, or both, the admissibility at trial of any statements made by the child for the purposes of the examination and any evidence obtained as a result of such statements shall be determined by the following rules:

(A) *Notice by Child of Sole Defense of Mental Illness or Mental Deficiency.* If a child notifies the court and prosecuting attorney under Minnesota Rules of Juvenile Procedure 20.02, subd. 1 of an intention to rely solely on the defense of mental illness or deficiency, any statements made by the child for the purpose of the mental examination and evidence obtained as a result of the statements shall be admissible at the trial upon that issue.

(B) *Separate Trial of Defenses.* If a child notifies the court and prosecuting attorney under Minnesota Rules of Juvenile Procedure 20.02, subd 1 of an intention to rely on the defense of mental illness or deficiency together with a defense of not guilty, there shall be a separation of the two defenses with a sequential order of proof before the court in a continuous trial in which the defense of not guilty shall be heard and determined first, and then the defense of the child's mental illness or deficiency.

(C) *Effect of Separate Trial.* If the child relies on the two defenses, the statements made by the child for the purpose of the mental examination and any evidence obtained as a result of such statements shall be admissible against the child only at that stage of the trial relating to the

defense of mental illness or mental deficiency.

(D) Procedure Upon Separated Trial of Defenses.

(1) Court Trial for Child Alleged to be Delinquent or Charged with a Juvenile Petty or Juvenile Traffic Offense. Upon the trial of the defense of not guilty the court shall determine whether the elements of the offense charged have been proved beyond a reasonable doubt. If the court determines that the elements of the offense have not been proved beyond a reasonable doubt, the court shall enter findings and order a dismissal pursuant to Minnesota Rules of Juvenile Procedure 13.09. If the court determines that the elements of the offense have been proved beyond a reasonable doubt and the child is relying on the sole defense of mental illness or mental deficiency, the defense of mental illness or mental deficiency shall then be tried and determined by the court. The child shall have the burden of proving the defense of mental illness or mental deficiency by a preponderance of the evidence. Based upon that determination the court shall make a finding of:

- (a) not guilty by reason of mental illness; or
- (b) not guilty by reason of mental deficiency; or
- (c) guilty.

The court shall enter findings pursuant to Minnesota Rules of Juvenile Procedure 13.09.

(2) Extended Jurisdiction Juvenile Proceedings. A court trial in an extended jurisdiction juvenile proceeding shall be conducted pursuant to Minnesota Rules of Juvenile Procedure 20.02, subd. 7(D)(1). A jury trial in an Extended Jurisdiction Juvenile proceeding shall be conducted pursuant to Minnesota Rules of Criminal Procedure 20.02, subd. 6(4).

Subd. 8. Procedure After Hearing.

(A) Mental Illness or Mental Deficiency Not Proven. After a finding of guilty and the defense of mental illness or deficiency not proven, the court shall schedule and conduct a disposition hearing. The issues of the child's mental illness or deficiency shall be considered by the court at disposition.

(B) Mental Illness or Mental Deficiency Proven. When a child is found not guilty by reason of mental illness or mental deficiency,

(1) the court shall order any existing civil commitment continued. If the child is not under commitment, the court may order the child held at a shelter or treatment facility for up to seventy-two (72) hours and shall direct civil commitment proceedings be initiated;

(2) if it is determined that the child does not meet the criteria for civil commitment jurisdiction and the child is under CHIPS jurisdiction, the court shall order such jurisdiction be continued. If the child is not under CHIPS jurisdiction, the court may order the child held for up to seventy-two (72) hours in an appropriate facility and shall direct CHIPS proceedings be initiated.

Comment -- Rule 20

Minn.R.Juv.P. 20 is based upon Minn.R.Crim.P. 20.

Under Minn.R.Juv.P. 20.01, subd. 2(C), the court shall permit examination of the child or observation of such examination by a qualified medical personnel retained and requested by the child or prosecuting attorney. The court has the authority to order payment of reasonable and necessary costs of evaluation of the child at public expense pursuant to Minn.Stat. § 260.251, subd.1(3) (1994).

RULE 21. APPEALS

RULE 21.01 GENERALLY

This rule governs the procedure for appeals from juvenile traffic and juvenile petty, delinquency, extended jurisdiction juvenile, certification proceedings in district court. Except as provided by these rules, Minnesota Rules of Civil Appellate Procedure shall govern appeals from juvenile court proceedings. These rules do not limit a child's right to seek extraordinary writs. In order to expedite its decision or for other good cause shown, the court of appeals may suspend any of these rules, except the time for filing a notice of appeal. The court of appeals shall expedite all appeals from juvenile court proceedings.

A party may petition to the Supreme Court of Minnesota for review pursuant to Minnesota Rules of Civil Appellate Procedure 117 or 118.

RULE 21.02 PROCEEDINGS IN FORMA PAUPERIS

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

Subd. 2. Exception for Juvenile Petty Offenders and Juvenile Traffic Offenders. The state public defender may, in its discretion, agree to represent a juvenile traffic offender or a juvenile petty offender who wants to appeal, cross-appeal, or defend an appeal taken by the prosecuting attorney if, after an administrative determination by the state public defender's office, the child is found financially eligible for representation.

RULE 21.03 APPEAL BY CHILD

Subd. 1. Right of Appeal. A child may appeal as of right from an adverse final order and certain non-final orders, as enumerated in Minnesota Rules of Juvenile Procedure 21.03, subd. 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 court shall notify a child of the right to appeal in any case where it issues a final order. A child may combine an appeal from a sentence or a disposition with an appeal from a judgment of conviction or an order for adjudication. The court shall not determine whether an offense will be adjudicated or continued without adjudication until the time of disposition.

Appeals from disposition or sentence shall only include matters which arose after adjudication or conviction. The court may review any other matter as the interests of justice require. In addition to all powers of review presently existing, the court may review the sentence or disposition to determine whether it is inconsistent with statutory requirements, unreasonable, inappropriate, excessive, unjustifiably disparate, or not warranted by the findings of fact issued by the sentencing court or court imposing the disposition.

(A) *Final Orders.* Final orders include orders for:

- (1) certification to adult court, whether the order is entered or stayed;
- (2) continuance without adjudication and disposition in delinquency proceedings pursuant to Minnesota Statutes § 260.185, subd. 1(a) or (b);
- (3) adjudication and disposition in delinquency proceedings pursuant to Minnesota Statutes § 260.185, subd. 1;
- (4) adjudication and disposition in juvenile petty or juvenile traffic offender proceedings;
- (5) denial of motion for new trial or rehearing;
- (6) determination as an extended jurisdiction juvenile prosecution;
- (7) conviction and sentencing of an extended jurisdiction juvenile;
- (8) an order, on the prosecuting attorney's motion, finding the child incompetent, if the underlying offense would be a felony or a gross misdemeanor if the offense were committed by an adult;
- (9) an order modifying a disposition; and
- (10) an order revoking probation including an order adjudicating a child delinquent after the child was granted a continuance without adjudication.

(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 Minnesota Rules of Juvenile Procedure 21.03, subd. 4(B).

(B) *Placement Pending Appeal.*

(1) Upon Certification. If the district court determines that a certified child should be detained, placement pending appeal shall be governed by Minnesota Rules of Criminal Procedure 6.02, and detention in an adult facility shall be presumed.

(2) Other Cases. If the child is detained, the reasons for the place of detention must be stated on the record, and the detention must comply with Minnesota 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 Minnesota Rules of Juvenile Procedure 21.03, 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 21.04 APPEAL BY PROSECUTING ATTORNEY

Subd. 1. Scope of Appeal. The prosecuting attorney 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 21.03, subd. 2. All other prosecutorial appeals shall proceed as follows:

(A) *Time for Appeal.* The prosecuting attorney may not appeal until all issues raised during the certification hearing or the evidentiary hearing and pretrial conference have been determined by the trial court. The appeal shall be taken within five (5) days after notice of entry of the order appealed from is served upon the prosecuting attorney by the district court administrator. An appeal by the prosecuting attorney under this rule bars any further appeal by the prosecuting attorney from any existing orders not included in the appeal. No appeal of a pretrial order by the prosecuting attorney shall be taken after jeopardy has attached. An appeal under this rule does not deprive the trial court of jurisdiction over pending matters not included in the appeal.

(B) *Notice of Appeal and Filing.* Minnesota Rules of Juvenile Procedure 21.03, subd. 2(B) shall govern notice of appeal and filing of an appeal by the prosecuting attorney except that the prosecuting attorney must file a statement of the case as provided for by Minnesota Rules of Civil Appellate Procedure 133.03. In addition, if a transcript of the proceedings is necessary, the prosecuting attorney must file a copy of the request for transcript with the clerk of the appellate court.

(C) *Briefs.* The Minnesota Rules of Civil Appellate Procedure shall govern the form and filing of briefs except as modified here:

(1) Within fifteen (15) days of delivery of the transcripts, appellant shall file the appellant's brief with the clerk of the appellate courts together with proof of service upon the respondent.

(2) The appellant's brief shall contain a statement of the procedural history.

(3) Within eight (8) days of service of appellant's brief upon respondent, the respondent shall file the respondent's brief with the appellate court clerk together with proof of service upon the appellant.

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

Subd. 5. Conditions of Release. Upon appeal by the prosecuting attorney of a pretrial order, the conditions for the child's release pending the appeal shall be governed by Minnesota Rules of Juvenile Procedure 5 or Minnesota Rules of Criminal Procedure 6.02, subds. 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 attorney, 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 attorney. The notice of cross-appeal shall be filed within ten (10) days after service of notice of the appeal by the prosecuting attorney. 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 21.05 APPEAL BY PARENT(S), LEGAL GUARDIAN OR LEGAL CUSTODIAN OF THE CHILD

If the parent(s), legal guardian or legal custodian participated separately pursuant to Minnesota Rules of Juvenile Procedure 2.04, subd. 3, 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), legal guardian or legal custodian shall be governed by Minnesota Rules of Juvenile Procedure 21.03, subd. 2.

RULE 21.06 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--Rule 21

An appeal may be taken by petitioning the Supreme Court of Minnesota for review pursuant to Minn.R.Civ.App.P. 117 or by petitioning for accelerated review pursuant to Minn.R.Civ.App.P. 118.

The scope of review shall be pursuant to Minn.R.Civ.App.P. 103.04.

Minn.R.Juv.P. 21.03, subd. 1(A)(4) includes the right to appeal the execution of a stayed sentence. See Minn.R.Crim.P. 27.04, subd. 3(5) and 28.05, subd. (2). An order continuing the matter without adjudication and imposing a disposition pursuant to Minn.Stat. § 260.185, subd. 1(a) or (b)(1994) is an appealable final order as is a subsequent order adjudicating the child and imposing a disposition pursuant to Minn.Stat. § 260.185, subd. 1 (1994).

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 Minn.R.Juv.P. 3.06, subd. 2. See also Minn.Stat. § 260.251, subd. 4 (1994).

Minn.R.Juv.P. 21.03, subd. 2(C)(1) refers to "necessary transcripts" because in some cases only a partial transcript will be required. Minn.R.Civ.App.P. 110.02 shall govern partial transcripts.

In the new legislation providing representation for juveniles on appeal and expedited appeals, funding for this mandate was not provided. Until further resources are available, it is recommended that the court of appeals be lenient in granting extensions for timing of briefs if requested. When added staff can be hired, the rules should be modified to shorten time frames to allow for more expedited appeals of juvenile cases.

Whether or not the order for certification should be stayed is discretionary with the court. Certification orders are governed by Minn.R.Juv.P. 18.06. 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.

RULE 22. SUBSTITUTION OF JUDGE

RULE 22.01 BEFORE OR DURING TRIAL

If by reason of death, sickness or other disability, the judge before whom pretrial proceedings or a jury trial has commenced is unable to proceed, any other judge sitting in or assigned to the court, upon certification of familiarity with the record of the proceedings or trial, may proceed with and finish the proceedings or trial.

RULE 22.02 AFTER VERDICT OR FINDING OF GUILT

If by reason of absence, death, sickness, or other disability, the judge before whom the child has been tried is unable to perform the duties to be performed by the court after a verdict or finding of guilt, any other judge sitting in or assigned to the court may perform those duties; but if such other judge is satisfied that those duties cannot be performed because of not presiding at the trial, such judge may grant a new trial.

RULE 22.03 INTEREST OR BIAS OF JUDGE

No judge shall preside over a trial or other proceeding if that judge is disqualified under the Code of Judicial Conduct. A request to disqualify a judge for cause shall be heard and determined by the chief judge of the judicial district or the assistant chief judge if the chief judge is the subject of the request. If the judge has personal knowledge of the child or the child's social or juvenile court history, even if such knowledge was obtained as part of prior delinquency or juvenile court proceedings, the child or prosecuting attorney may remove the judge without further showing of bias and interest.

RULE 22.04 NOTICE TO REMOVE

Subd. 1. Service and Filing. The child or the prosecuting attorney may serve on the other parties and file with the court administrator a notice to remove the judge assigned to a trial or hearing. The notice shall be served and filed within seven (7) days after the party receives written notice, or oral notice in court on the record, of which judge is to preside at the trial or hearing but, in any event, not earlier than seven (7) days after the initial hearing and assignment of counsel for the child and not later than the commencement of the trial or the hearing.

Subd. 2. Removal of Presiding Judge. Except as provided below in Minnesota Rules of Juvenile Procedure 22.04, subd. 3, no notice shall be effective against a judge who has already presided at the trial, probable cause hearing, or other evidentiary hearing of which the party had notice, except where a party shows cause why a judge should be removed. After a party has once disqualified a presiding judge as a matter of right, that party may disqualify the substitute judge only upon an affirmative showing of cause.

Subd. 3. Automatic Removal of Judge. Pursuant to Minnesota Rules of Juvenile Procedure 12.02, if the court suppresses evidence as the result of an omnibus hearing held before trial, a new judge shall be assigned to hear the trial unless the parties otherwise agree. If the parties do not agree, assignment of a new judge is automatic and neither party need serve and file a notice to remove. Pursuant to Minnesota Rules of Juvenile Procedure 19.06, subd. 3, the judge who presides over a contested extended jurisdiction juvenile hearing shall not preside over a court trial in a subsequent adjudicatory proceeding regarding this offense, unless otherwise agreed by the child and the prosecuting attorney. Pursuant to Minnesota Rules of Juvenile Procedure 18.06, subd. 3, 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 attorney.

RULE 22.05 ASSIGNMENT OF NEW JUDGE

Upon the removal, disqualification, disability, recusal or unavailability of a judge under this rule, the chief judge of the judicial district shall assign any other judge within the district to hear the matter. If there is no other judge of the district who is qualified to hear the matter, the chief judge of the district shall notify the chief justice. The chief justice shall then assign a judge of another district to preside over the matter.

Comment--Rule 22

This rule is modeled after Minn.R.Crim.P. 26.03, subd. 13. The rule permits the child or prosecuting attorney to serve and file a notice to remove a judge as a matter of right without cause. Only one such removal as a matter of right is permitted to a party. Other removals must be for cause.

The right to a fair trial before an impartial tribunal is a fundamental due process requirement. See, e.g., Estes v. Texas, 381 U.S. 532, 85 S.Ct. 1628, 14 L.Ed.2d. 543 (1965). The Supreme Court in In re Murchison, 349 U.S.133, 75 S.Ct. 623 (1955), explained the importance of an impartial tribunal: "Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness...[T]o perform its high function in the best way, `justice must satisfy the appearance of justice.'" 349 U.S. at 136 citing Offutt v. United States, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954). Moreover, the fact finder must make a determination based only on the evidence in the record in order to ensure effective appellate review. See, e.g., Patterson v.

Colorado, 205 U.S. 454 (1907).

The appearance, if not the actuality, of neutral and unbiased fact-finding may be compromised if the judge has actual knowledge of the social history or prior court history of the child. See, e.g., In re Gladys R., 1 Cal.3d 855, 464 P.2d 127, 83 Cal. Rptr. 671 (1970)(reversible error for juvenile court to review social study report before jurisdictional hearing). The problem is especially acute in delinquency proceedings because juveniles, with the exception of extended jurisdiction juveniles, do not have the right to a jury trial. McKeiver v. Pennsylvania, 403 U.S. 528, 91 S.Ct. 1976, 29 L.Ed. 647 (1970). Whenever a judge knows information that is not admissible at trial but is prejudicial to a child, the impartiality of the tribunal is open to question. A.B.A. Juvenile Justice Standards Relating to Adjudication, Standard 4.1 at 54. The problem of impartiality is particularly troublesome in juvenile court proceedings because the same judge typically handles the same case at different stages. For example, at a detention hearing, a judge may be exposed to a youth's social history file and prior record of police contacts and delinquency adjudications, all of which bear on the issue of appropriate pretrial placement. When the same judge is subsequently called upon to determine the admissibility of evidence in a suppression hearing and the guilt of the juvenile in the same proceeding, the juvenile's basic right to a fair trial by an impartial tribunal with a determination of guilt based on admissible evidence may be compromised. E.g., In re J.P.L., 359 N.W.2d 622 (Minn. Ct. App. 1984).

Minn.R.Juv.P. 22.03 provides that when a judge has actual knowledge of the social or court history of child, a child has good cause to remove that judge as the trier of fact. Actual knowledge means personal familiarity with the child's records or files, and not simple constructive knowledge based on the existence of the records in the court's files. Because the extent of familiarity and the prejudicial content may vary considerably, both parties may agree to allow the judge to preside even in instances in which the court is familiar with prior records or proceedings involving the child.

Minn.R.Juv.P. 12.02 and Minn.R.Juv.P. 22.04, subd. 3 provide that a judge who suppresses evidence at a pretrial hearing should generally not be the trier of fact.

RULE 23. REFEREE

RULE 23.01 AUTHORIZATION TO HEAR CASES

A referee may hear matters as authorized by statute.

RULE 23.02 OBJECTION TO ASSIGNMENT OF REFEREE

The child or the prosecuting attorney may object to a referee presiding at a hearing. This objection shall be in writing and filed with the court within three (3) days after being informed that the matter is to be heard by a referee or the right to object is waived. The court may permit the filing of a written objection at any time. After the filing of an objection, a judge shall hear any motion and preside at any hearing.

RULE 23.03 NOTICE TO REMOVE A PARTICULAR REFEREE

The child or the prosecuting attorney may serve on the other party and file with the court administrator a notice to remove a particular referee assigned to a trial or hearing in the same manner as a judge may be removed under Minnesota Rules of Juvenile Procedure 22. After a party has once disqualified a referee as a matter of right, that party may disqualify the substitute judge or referee only upon an affirmative showing of cause.

RULE 23.04 TRANSMITTAL OF FINDINGS

Upon the conclusion of a hearing, the referee shall transmit to the judge findings and recommendations in writing. Notice of the findings of the referee together with a statement relative to the right to a review before a judge shall be given either orally on the record, or in writing to the child, the child's counsel, the child's parent(s), legal guardian or legal custodian and their counsel, the prosecuting attorney and to any other person that the court may direct.

RULE 23.05 REVIEW

Subd. 1. Generally. A matter which has been decided by a referee may be reviewed in whole or in part by a judge.

Subd. 2. Filing. A motion for a review by a judge must be filed with the court within ten (10) days after the referee's findings and recommendations have been provided to the child, child's counsel, prosecuting attorney, child's parents, legal guardian or legal custodian and their counsel pursuant to Minnesota Rules of Juvenile Procedure 28.

Subd. 3. Right of Review Upon Filing of Timely Motion.

(A) *Right of Child.* The child is entitled to a review by a judge in any matter upon which a referee has made findings or recommendations.

(B) *Right of Prosecuting Attorney.* The prosecuting attorney is entitled to a review by a judge from any pre-trial findings or recommendations of a referee except those dismissing a petition for lack of probable cause. The prosecuting attorney is not entitled to a review by a judge after jeopardy has attached.

(C) *Right of Parent(s), Legal Guardian or Legal Custodian.* The child's parent(s), legal guardian or legal custodian are entitled to a review by a judge of a referee's findings or recommendations made after the allegations of a charging document have been proved.

Subd. 4. The Court. The judge may grant a review at any time before confirming the findings and recommendation of the referee.

Subd. 5. Procedure. A review by a judge may be of the verbatim record or de novo in whole or in part.

RULE 23.06 ORDER OF THE COURT

The findings and recommendations of the referee become the order of the court when confirmed by the judge subject to review pursuant to Minnesota Rules of Juvenile Procedure 23.05.

RULE 24. GUARDIAN AD LITEM

RULE 24.01 APPOINTMENT

(A) The court shall appoint a guardian ad litem, except as provided in Minnesota Rules of Juvenile Procedure 24.01, subd. 2, to act in place of a parent, legal guardian or legal custodian to protect the best interest of the child when it appears, at any stage of the proceedings, that the child is without a parent, legal guardian or legal custodian. If the parent, legal guardian or legal custodian is unavailable, incompetent, indifferent to, hostile to, or has interests in conflict with the child's best interests, a guardian ad litem shall be appointed.

(B) The court may determine not to appoint a guardian ad litem when:

- (1) counsel has been appointed or is otherwise retained for the child, and
- (2) the court finds that the best interests of the child are otherwise protected.

A determination not to appoint a guardian ad litem must be based on a finding made on the record or in writing which states the reasons for the decision.

(C) The court may appoint a guardian ad litem on its own motion or on the motion of the child's counsel or the prosecuting attorney when the court determines that an appointment is in the best interest of the child.

RULE 24.02 GUARDIAN AD LITEM NOT COUNSEL FOR CHILD

When the court appoints a guardian ad litem, the guardian ad litem shall not be the child's counsel.

RULE 25. NOTICE

RULE 25.01 SUMMONS AND NOTICE IN LIEU OF SUMMONS

Subd. 1. Summons. A summons is a document personally served on a person directing that person to appear before the court at a specified time and place. If the person summoned fails to appear, the court may issue an arrest warrant or, for the child, a warrant for immediate custody.

Subd. 2. Notice in Lieu of Summons. A notice in lieu of summons is a document mailed by the court administrator to a person who is directed to appear in court at a specified time and place. If a person appears pursuant to the mailed notice, the person waives the right to personal service of the summons. If the person fails to appear, the court shall not issue a warrant until personal service is made or attempted.

Subd. 3. Oral Notice on the Record. The court may schedule further proceedings by oral notice to all persons present. Oral notice on the record shall be sufficient notice to all persons present. Any person not present who is entitled to notice, shall receive written notice.

RULE 25.02 CONTENT

Any summons or notice in lieu of summons shall include:

- (A) a copy of the petition, citation, tab charge, court order, motion, affidavit or other legal documents, filed with the court which require a court appearance;
- (B) a statement of the time and place of the hearing;
- (C) a brief statement describing the purpose of the hearing;
- (D) a brief statement of rights of the child and parents;
- (E) notice to the child and parent that a failure to appear in court could result in a warrant; and
- (F) such other matters as the court may direct.

RULE 25.03 PROCEDURE FOR NOTIFICATION OF ARRAIGNMENT

Subd. 1. First Notice by Mail. After a charging document has been filed, the court administrator shall schedule a hearing as required by these rules. A notice in lieu of summons shall be served by first class mail on the following:

- (A) child and parent(s) or person(s) with custody of the child; and
- (B) child's counsel, prosecuting attorney, spouse of child and their counsel.

The court may waive notice to the parent(s), legal guardian, legal custodian, or spouse of the child if it would be in the child's best interest to proceed without their presence.

Subd. 2. Personal Service. If the child and/or parent(s) fail to appear in response to one or more notices in lieu of summons served by mail, a summons may be served personally

in the manner provided by Minnesota law. The summons shall advise the person served that a failure to appear may result in the court issuing a warrant for arrest.

Subd. 3. Warrant for Arrest or Immediate Custody. A warrant for arrest or immediate custody may be issued by the court for a child or parent(s) who fail to appear in response to a summons which has been personally served or in a case where the court has reason to believe the person is avoiding personal service.

Subd. 4. Timing. A notice in lieu of summons shall be mailed at least five (5) days before the hearing. A summons shall be personally served at least five (5) days before the hearing. These times may be waived by a person or by the court for good cause shown.

Subd. 5. Proof of Service.

(A) *Personal Service.* On or before the date set for appearance, the person who served a summons by personal service shall file a written statement with the court showing:

- (1) that the summons was served, and
- (2) the person on whom the summons was served, and
- (3) the date, time, and place of service.

(B) *Service by Mail.* On or before the date set for appearance, the person who served notice in lieu of summons by mail shall file a written statement with the court showing:

- (1) the name of the person to whom the summons or notice was mailed;
- (2) the date the summons or notice was mailed;
- (3) whether the summons or notice was sent by certified mail.

RULE 25.04 WAIVER

Service is waived by voluntary appearance in court or by a written waiver of service filed with the court.

Comment--Rule 25

Pursuant to Minn.Stat. § 260.141, subd. 2 (1994), notices of juvenile court proceedings are to be made by personal service or if made pursuant to Minn.R.Civ.P. 4.02, by mail with an acknowledgement returned to the court. That has not been the practice throughout the state. This rule is written to reflect the common practice of simply mailing the notice (called a notice in lieu of summons) and petition by first class mail. If those served do not appear in response to the notice, the court can proceed with personal service of a summons and follow up with a warrant if there is still a failure to appear. Appearance rates are generally high with just a mailed notice and the costs of process are significantly increased by mailed service with acknowledgement or by personal service. The legislature should consider changing the statute referenced.

In the appendix of these rules are samples of a notice in lieu of summons and a summons.

RULE 26. SUBPOENAS

RULE 26.01 MOTION OR REQUEST FOR SUBPOENAS

On the court's own motion or at the request of the child's counsel or the prosecuting attorney, the clerk shall issue subpoenas requiring the attendance and testimony of witnesses and the production of records, documents or other tangible objects at any hearing.

Counsel for the parent(s), legal guardian and legal custodian of the child have the right to request the issuance of subpoenas requiring the attendance and testimony of witnesses and the production of records, documents or other tangible objects at any hearing after the allegations of the charging document have been proved.

RULE 26.02 EXPENSE

The fees and mileage of witnesses shall be paid at public expense if the subpoena is issued by the court on its own motion or at the request of the prosecuting attorney.

If a subpoena is issued at the request of the child's counsel or counsel for the parent(s), legal guardian, or legal custodian, and the child or parent(s) of the child are unable to pay the fees and mileage of witnesses, these costs shall be paid at public expense, upon approval by the court, in whole or in part, depending on the ability of the child and the parent(s) of the child to pay. All other fees shall be paid by the requesting person unless otherwise ordered by the court.

RULE 27. MOTIONS

RULE 27.01 MOTIONS TO BE SIGNED

Every motion shall be in writing, state with particularity the grounds, be signed by the person making the motion and filed with the court unless it is made in court and on the record.

RULE 27.02 SERVICE OF MOTIONS

Subd. 1. When Required. Every written motion along with any supporting affidavits shall be served on the child, the child's counsel, the prosecuting attorney and the parent(s), legal guardian or legal custodian of the child.

Subd. 2. How Made. The moving party shall serve the other parties. If the other parties are represented by counsel, the moving party shall serve the other parties' counsel unless the court orders otherwise. Service of motions may be made by personal service or by mail. Service by mail shall be complete upon mailing to the last known address of the person to be served.

Subd. 3. Time. Any motion required by this rule to be served, along with any supporting affidavits, shall be served at least three (3) days before it is to be heard unless the court for good cause shown permits a motion to be made and served less than three (3) days before it is to be heard.

RULE 28. COPIES OF ORDERS

Court orders shall be stated on the record at the hearing or a copy of the written order shall be mailed to the child, the child's counsel, prosecuting attorney, the parent(s), the legal guardian or legal custodian of the child and their counsel. Copies of court orders shall be sent by the court to those listed above who request such a copy in writing or on the record and to such other persons as the court may direct.

RULE 29. RECORDING

RULE 29.01 PROCEDURE

A verbatim recording of all hearings shall be made by a stenographic reporter or by an electronic reporter. If the recording is made by an electronic reporter, any required transcripts shall be prepared by personnel assigned by the court.

RULE 29.02 AVAILABILITY OF TRANSCRIPTS

Subd. 1. Child's Counsel and Prosecuting Attorney. Transcripts of hearings for further use in the hearing or subsequent hearings, appeal, habeas corpus action or for other use as the court may approve, shall be made available to the child's counsel or the prosecuting attorney upon written request to the court reporter.

Subd. 2. Counsel for Parent(s), Legal Guardian or Legal Custodian. Transcripts of hearings for use at dispositional hearings, for appeal from disposition hearings, or for other use as the court approves, shall be made available to counsel for the parent(s), legal guardian or legal custodian of the child when they participate pursuant to Minnesota Rules of Juvenile Procedure 2.03, subd. 3. Applications for transcripts shall be made to the court in writing or on the record.

RULE 29.03 EXPENSE

If the person requesting a transcript is unable to pay the preparation cost, the person may apply to the court for an order directing the preparation and delivery of the transcript to the person requesting it, at public expense. Depending on the ability of the person to pay, the court may order partial reimbursement for the cost of transcript.

RULE 30. RECORDS

RULE 30.01 GENERALLY

Subd. 1. Records Defined. Juvenile court records include:

- (A) all documents filed with the court;
- (B) all documents maintained by the court;
- (C) all reporter's notes and tapes, electronic recordings and transcripts of hearings and trials; and
- (D) as relates to delinquency matters, all documents maintained by juvenile probation officers, county home schools and county detention agencies.

Subd. 2. Duration of Maintaining Records. The juvenile court shall maintain records as required by Minnesota Statute.

RULE 30.02 AVAILABILITY OF JUVENILE COURT RECORDS

Subd. 1. By Statute or Rule. Juvenile Court records shall be available for inspection, copying and release as required by statute or these rules.

Subd. 2. No Order Required.

(A) *Court and Court Personnel.* Juvenile court records shall be available to the court and court personnel without a court order.

(B) Juvenile court records of the child shall be available for inspection, copying and release to the following without court order:

- (1) the child's counsel and guardian ad litem;
- (2) counsel and guardian ad litem for the child's parent(s), legal guardian or legal custodian.

(C) *Prosecuting Attorney.* Juvenile court records shall be available for inspection, copying or release to the prosecuting attorney. However, if the matter has not had court action taken on it for over one (1) year, the court may require an ex-parte showing by the prosecuting attorney that inspection or copying of the court records is necessary and in the best interest of the child, public safety, or the functioning of the juvenile court system,

(D) *Other.* The juvenile court shall forward data to agencies and others as required by Minnesota Statute.

Subd. 3. Court Order Required.

(A) *Person(s) with Custody or Supervision of the Child, and Others.* The court may order juvenile court records to be made available for inspection, copying, disclosure or release, subject to such conditions as the court may direct, to:

- (1) a representative of a state or private agency providing supervision or having custody of the child under order of the court; or
- (2) any individual for whom such record is needed to assist or to supervise the

child in fulfilling a court order; or

(3) any other person having a legitimate interest in the child or in the operation of the court.

(B) *Public.* A court order is required before any inspection, copying, disclosure or release to the public of the record of a child. Before any court order is made the court must find that inspection, copying, disclosure or release is:

(1) in the best interests of the child; or

(2) in the interests of public safety; or

(3) necessary for the functioning of the juvenile court system.

(C) *Disclosure Prohibited.* The record of the child shall not be inspected, copied, disclosed or released to any present or prospective employer of the child or the military services.

RULE 30.03 COURT RULE MAY DEFINE PROCESS

All inspection and release of juvenile records may be subject to individual court rules to provide for an efficient, just and orderly process of allowing inspection, copying, disclosure, or release.

Comment--Rule 30

Legal records as defined in Minn.Stat. § 260.161, subd. 1 (1994), are the petition, summons, notice, findings, orders, decrees, judgments and motions and such other matters as the court deems necessary and proper. Minn.Stat. § 260.161, subd. 2 (1994), provides exceptions to public access of "legal records," arising under Minn.Stat. § 260.155, subd. 1 (1994), delinquency proceedings alleging or proving a felony level violation by a juvenile at least 16 years old at the time of violation, along with the following exclusions: (1) Minn.Stat. § 245A.04, subd. 3 (Supp. 1995) which directs the court to provide juvenile court records to the Commissioner of Human Services; and (2) Minn.Stat. §§ 611A.03, 611A.04, 611A.06 and 629.73 (1994) which provide for the rights of victims in delinquency proceedings, juvenile traffic proceedings involving driving under the influence of alcohol or drugs and proceedings involving any other act committed by a juvenile that would be a crime as defined in Minn.Stat. § 609.02 (1994), if committed by an adult.

The juvenile court shall maintain records pertaining to juvenile delinquency adjudications until the juvenile reaches 28 years of age. Records pertaining to convictions of extended jurisdiction juveniles shall be maintained for as long as they would be maintained if the offender had been an adult.

Pursuant to Minn.Stat. § 260.161, subd. 1a (1994), the juvenile court shall forward data for juvenile delinquents adjudicated delinquent for felony level criminal sexual conduct. The court shall also forward data to the BCA on persons convicted as extended jurisdiction juveniles.

If a juvenile is enrolled in school, the probation officer shall transmit a copy of the court's disposition order if the juvenile is adjudicated delinquent for committing an act on school property or if the juvenile is adjudicated delinquent for one of the offenses enumerated in Minn. Stat. § 260.161, subd. 1b (1994). When a disposition order is transmitted to a school, the parent, legal guardian or legal custodian shall be notified that this information has been sent to the juvenile's school.

RULE 31. TIMING

RULE 31.01 COMPUTATION

Unless otherwise provided by statute or specific Minnesota Rules of Juvenile Procedure, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or legal holiday. When a period of time prescribed or allowed is three days or less, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. As used in these rules, "legal holiday" includes New Year's Day, Martin Luther King's Birthday, Washington's Birthday (President's Day), Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, the day after Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or Congress of the United States or by the State.

RULE 31.02 ADDITIONAL TIME AFTER SERVICE BY MAIL

Whenever a person has the right or is required to do an act within a prescribed period after the service of a notice or other paper and the notice or other paper is served by mail, three (3) days shall be added to the prescribed period.

Delete present Minnesota Rules of Juvenile Procedure 37.01 and insert the following:

RULE 37.01 SCOPE AND APPLICATION

Rules 37 through 65 govern the procedure for juvenile protection matters in the juvenile courts in the State of Minnesota. Juvenile protection matters include all children in need of protection or services (including truants and runaways) as defined by Minnesota Statutes § 260.015, subd. 2a (1994), neglect, neglected and in foster care, termination of parental rights, review of foster care, domestic child abuse and, reviews of out of home placement and permanent placement determination matters.

APPENDIX OF PROPOSED FORMS

STATEMENT OF RIGHTS

DELINQUENCY PROCEEDINGS

You have been charged with a delinquent act by a document filed in the _____ County Juvenile Court. You have the following rights:

- 1. The right to understand the charge(s) against you.**

- 2. The right to be represented by an attorney. If you cannot afford an attorney, the judge will appoint an attorney for you at public expense. The judge may order you or your parent(s) to pay some or all of the attorney expense depending on the ability to pay. You may not be represented in court by anyone who is not an attorney, even if that person is your parent.**

- 3. The right to plead guilty, plead not guilty or remain silent. If you remain silent, the judge will enter a not guilty plea for you and the case will go to trial.**

- 4. If you plead not guilty, you have additional rights including:**
 - a. The right to a trial before a judge;**

 - b. At the trial the state is required to present witnesses to prove beyond a reasonable doubt that you committed the offense(s);**

 - c. The right to cross-examine witnesses called by the state;**

 - d. The right to subpoena witnesses (get a court order**

for someone to appear) and present evidence on your own behalf; and

e. The right not to testify or to give an explanation of your actions.

5. If you plead guilty, you give up the rights listed in paragraph 4.

6. The judge will ask you what you did. The judge cannot accept your admission unless you admit doing something which is against the law.

7. Your plea must be made freely and voluntary, without threats or promises by anyone.

8. If you plead guilty or the judge finds you committed an offense, the judge may:

a. Counsel you and your parent(s), legal guardian(s) or legal custodian(s).

b. Place you on probation in your own home under conditions established by the court;

c. Transfer your legal custody under court supervision and place you out of your home;

d. Transfer your legal custody by commitment to the Commissioner of Corrections;

e. Order restitution of any damage done to a person(s) or property;

f. Order special treatment or care for your physical or mental health;

g. Recommend to the Commissioner of Public Safety that your driving license be canceled or revoked;

h. Order community work service or a fine up to \$700.00; and

i. If a gun or dangerous weapon was involved, consider imposition of additional consequences.

9. If you plead guilty or the judge finds you committed a felony after your 14th birthday, this may be a basis for additional jail or prison time if you commit a felony and are sentenced as an adult before your 25th birthday.

10. If you plead guilty or the judge finds you committed a felony, this may be used to decide if your case should be transferred to adult court or treated as an extended jurisdiction juvenile if you commit another felony.

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

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

DATED: _____
(Signature of Child)

DATED: _____
(Signature of Parent)

STATEMENT OF RIGHTS

JUVENILE PETTY OFFENDER PROCEEDINGS

You have been charged with a petty offense by a document filed in the _____County Juvenile Court. With regard to the charge(s), you have the following rights:

- 1. The right to understand the charges against you.**
- 2. The right to be represented by an attorney that you hire. For certain charges, if you cannot afford an attorney, the judge will appoint an attorney for you at public expense. The judge may order you or your parent(s) to pay some or all of the attorney expense depending on the ability to pay. You may not be represented in court by anyone who is not an attorney, even if that person is your parent.**
- 3. The right to plead guilty, plead not guilty or remain silent. If you remain silent, the judge will enter a not guilty plea for you and the case will go to trial.**
- 4. If you plead not guilty, you have additional rights including:**
 - a. The right to a trial before a judge;**
 - b. At the trial, the state is required to prove beyond a reasonable doubt that you committed the offense(s);**
 - c. The right to cross-examine witnesses called by the state;**
 - d. The right to subpoena witnesses and present evidence on your own behalf; and**

e. The right not to testify or to give an explanation of your actions.

5. If you plead guilty, you give up the rights listed in paragraph 4.

6. The judge will ask you what you did. The judge cannot accept your plea unless you admit doing something which is against the law.

7. Your plea must be made freely and voluntarily, without threats or promises by anyone.

8. If you plead guilty or the judge finds you committed an offense, the judge may:

a. Require you to pay a fine of up to \$100;

b. Require you to take part in a community service project;

c. Require you to participate in a drug awareness program;

d. Place you on probation for up to six months;

e. Order you to undergo a chemical use assessment and participate in an outpatient treatment program;

f. Order restitution for any damage to person(s) or property;

g. Order you to perform other activities or participate in other outpatient treatment programs deemed appropriate

by the judge.

9. If you plead guilty or the Judge finds you committed a second or subsequent juvenile alcohol or controlled substance offense, in addition to the above penalties, the judge may:

a. Send you driver's license or driving permit to the Commissioner of Public Safety who shall revoke it for one year or until your 18th birthday, whichever is longer.

b. Suspend your driver's license or driving permit for up to 90 days, but allow you to travel to work.

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

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

DATED: _____
(Signature of Child)

DATED: _____
(Signature of Parent)

STATEMENT OF RIGHTS

JUVENILE TRAFFIC OFFENDER PROCEEDINGS

You have been charged as a juvenile major traffic offender by a document filed in the _____ County Juvenile Court. With regard to the charges, you have the following rights:

1. The right to understand the charges against you.
2. The right to be represented by an attorney that you hire. For certain charges, if you cannot afford an attorney, the judge will appoint an attorney for you at public expense. The judge may order you or your parent(s) to pay some or all of the attorney expense depending on the ability to pay. You may not be represented in court by anyone who is not an attorney, even if that person is your parent.
3. The right to plead guilty, plead not guilty or remain silent. If you remain silent, the judge will enter a not guilty plea for you and the case will go to trial.
4. If you plead not guilty, you have additional rights including:
 - a. The right to a trial before a judge;
 - b. At the trial the state is required to prove beyond a reasonable doubt that you committed the offense(s);
 - c. The right to cross-examine witnesses called by the state;
 - d. The right to subpoena witnesses and present evidence on your own behalf;
and
 - e. The right not to testify or to give an explanation of your actions.
5. If you plead guilty, you give up the rights listed in paragraph 4.
6. The judge will ask you what you did. The judge cannot accept your plea unless you admit doing something which is against the law.
7. Your plea must be made freely and voluntarily, without threats or promises by anyone.
8. If you plead guilty or the judge finds you guilty of an offense, the judge may:
 - a. Reprimand you and counsel you and your parent(s), legal guardian(s) or

legal custodian(s);

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

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

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

DATED: _____

(Signature of Child)

DATED: _____

(Signature of Parent)

NOTICE OF THE RIGHTS OF VICTIMS IN JUVENILE COURT

1. Right to Participation

Minnesota law (Minn.Stat. § 260.155, subd.1 (1994) and § 611A.01, et seq. (1994)) prohibits the public from attending juvenile hearings in most cases. However, a person who has a direct interest in the case, such as a crime victim, has the following rights to participate:

- Right to have input in a pretrial diversion program decision;
- Right to object to the proposed disposition and a plea agreement;
- Right to request a speedy trial;
- Right to be present in court at the time of the dispositional hearing (sentencing); and
- Right to submit an impact statement to court orally or in writing, at the time of sentencing or dispositional hearing.

2. Right to Notification

You have a right to be notified of certain information such as the following:

- The contents of any plea agreement recommendation;
- The schedule changes in court proceedings if you have been subpoenaed or requested to testify;
- The information regarding bail hearing of arrested or detained juvenile;
- The final disposition of the case;
- The transfer of the juvenile to a less secure correctional facility;
- The release of the juvenile from a custodial institution; and
- The escape and apprehension of the juvenile from a custodial institution.

3. Right to Protection

As a victim and/or witness, you have certain rights to protection as the following:

- Right to a safe and secure waiting area during the court process;
- Right to request a law enforcement agency to withhold public access to data revealing your identity;
- Right not to give your home or business address in open court; and
- Right not to be retaliated against by employers if you were called to testify as a victim or witness.

4. Right to Financial Assistance

You may be eligible for financial assistance from the state through the Crime Victims' Reparations Board if you have suffered economic loss as a result of a violent crime. Also, you may request the court to order the juvenile to pay restitution pursuant to Minn.Stat. §611A.04. If the juvenile fails to pay restitution as ordered, you have the right to ask the juvenile's probation officer to request a probation review hearing.

JUVENILE COURT PROCEEDINGS

DETENTION

A juvenile can be detained at his or her home subject to electronic home monitoring, in foster care, at a shelter care facility, at a secure detention facility, at a detoxification, chemical dependency or psychiatric facility, or at an adult jail. Most juveniles in detention must come before the court within 36 hours of being taken into custody for a detention hearing.

ARRAIGNMENT

At the arraignment hearing, the juvenile will appear in court and be asked to plead guilty or not guilty to the charges. Juveniles are entitled to representation by an attorney. A plea of guilty leads to a disposition (sentencing) hearing. If a juvenile pleads not guilty, there will be a trial.

PRETRIAL HEARING

In most cases, the judge orders a pretrial hearing to decide issues of law before trial.

TRIAL

A juvenile has the same legal protections during trial as an adult charged with a similar crime. Except for Extended Jurisdiction Juvenile (EJJ) jury trials, juvenile trials are held before the judge who will decide whether the juvenile is guilty or not guilty. If the petition has been proved, there will be a disposition hearing.

DISPOSITION

The disposition may include restitution, fines, community service, probation, out-of-home placement, counseling or treatment, and victim/offender mediation. The court will take into consideration the seriousness of the offense, the child's prior history of offenses, and available programs and services.

COUNTY OF _____ JUDICIAL DISTRICT _____

IN THE MATTER OF THE WELFARE OF:

Juvenile

FILE NO. _____

**APPLICATION TO ENTER A GUILTY PLEA
IN JUVENILE DELINQUENCY CASES**

My name is _____.

I am _____ years old. My birthday is _____, 19____.
(month) (date) (year)

I have a copy of the Charging Document (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 understand that:

I. CHARGES

1. I am charged with the following crime: _____
(offense)
_____ committed on or about _____
(month) (date)
19____, in _____ County.
(year)

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

II. LAWYER

3. I have a lawyer whose name is _____.
My lawyer and I have talked about the charges and all of my rights. I understand what they mean. I have had enough time to talk with my lawyer.

4. We have talked about all possible defenses and how useful they will be for me.

5. We have also talked about the strengths and weaknesses of the case against me.

6. I know I do not have to admit anything.

III. TRIAL

7. I know I have a right to a trial within thirty (30) days if I am being held in detention or within sixty (60) days if I am not held in detention.
8. If I have a trial, I know that:
 - (a) I am presumed to be innocent unless the charge against me is proved beyond a reasonable doubt by the state. I do not need to prove my innocence.
 - (b) I could testify and tell my side of the story if I choose. Or, I could remain silent. If I choose to remain silent, no one would hold that against me in any way.
 - (c) I could get a subpoena (court order) from the court to make people come to court to testify for me. I could be there to hear and question any people who come to testify against me.
9. I understand that if I plead guilty to the charge against me, I give up my right to a trial.
10. I understand that if I plead guilty to the charge against me, I will be telling the court that I did it.
11. Knowing my right to a trial, I now give up this right.

IV. GUILT

12. My lawyer has told me that the judge will not accept a plea from someone who says they are innocent. I am not saying that I am innocent.

V. PLEA AGREEMENT

13. My lawyer has told me, and I understand:
 - (a) That he/she talked about my case with the prosecutor, and that my lawyer and the prosecutor agreed to the following plea agreement:

(Fill in agreement here.)

- (b) If the court does not accept this agreement:
 - (1) I have a right to withdraw my plea of guilt and have a trial.

(2) Anything that I said in court about my plea could not be used against me.

14. Except for the agreement between my lawyer and the prosecuting attorney, no one has made any promises or threats to me to get me to plead guilty.
15. I understand that if the court accepts guilty plea, there will be a disposition, or sentencing.
16. The most serious disposition could be that the court could send me to a state institution until my 19th birthday.
17. If the court allows me to stay in the community, the court could place me on probation and require me to pay a fine, pay restitution, do community work service, participate in treatment, live in a local community or group home, or follow other special rules of probation.
18. If I fail to obey the court order, I could be arrested and placed in detention.
19. I could be on probation until my 19th birthday and during that time, the court can change the disposition during that time.
20. If the facts in the petition are found to be true, I will have a juvenile record. This record could be used against me if I am charged with a crime as an adult. This record could result in a longer sentence if I am convicted of a crime when I am an adult. This record could be used to decide if I will be treated as an adult if I commit another crime when I am still a child. This could lead to more serious charges if I get in trouble again.
21. **I have read this petition to plead guilty and I understand it. By signing this petition, I am telling the court that I understand the rights I am giving up and I want to plead guilty to the charge of _____.**

Date: _____

Child

Date: _____

Child's Counsel

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE MATTER OF THE WELFARE OF:

_____, A CHILD.

FILE NO. _____

NOTICE IN LIEU OF SUMMONS

TO: The above-named child and to the child's parent(s), legal guardian, legal custodian or person having custody and control of child: _____

ADDRESS: _____

PLEASE take notice that charges have been filed with this Court alleging that the child is a:

- juvenile traffic offender
- juvenile petty offender
- delinquent

and the Court has directed that a hearing be held in this matter at the _____ Courthouse, Courtroom __, _____, Minnesota on _____, 19__ at _____ before a Judge of District Court.

YOU ARE entitled to have a summons requiring your appearance served upon you. For your convenience, the Court has directed that this notice be mailed to you instead of issuing a summons. However, if you do not appear at the hearing, a summons will be issued.

Attached is a copy of the:

- charging document
- court order
- motion
- affidavit
- other: _____

ALSO attached is a statement describing the purpose of the hearing, the possible consequences of the hearing and an explanation of the child's basic rights, including the parent(s) or guardian's right to participate separately from the child if the Court finds that the allegations have been proved. **PLEASE READ ATTACHED ITEMS CAREFULLY.**

TAKE NOTICE THAT if you fail to appear in response to this notice, the Court may conduct a hearing without your presence and grant appropriate relief. Further information concerning the date and consequences of a later hearing, if any, may be obtained from the Court by a request in writing.

DATED: _____

BY THE COURT:

Court Administrator

BY _____

Served by regular mail

Date _____ by _____

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

IN THE MATTER OF THE WELFARE OF:

_____, A CHILD. FILE NO. _____

SUMMONS

TO: The above-named child and to the child's parent(s), legal guardian, legal custodian or person having custody and control of child: _____

ADDRESS: _____

PLEASE take notice that a petition has been filed with this Court alleging that the child is _____ and the Court has directed that a hearing be held in this matter at the _____ Courthouse, Courtroom ____, ____, Minnesota on _____, 19__ before a Judge of District Court.

Attached is a copy of the:

- charging document
- court order
- motion
- affidavit
- other: _____

ALSO attached is a statement describing the purpose of the hearing, the possible consequences of the hearing and an explanation of the child's basic rights, including the rights of the parent(s) or guardian. **PLEASE READ ATTACHED ITEMS CAREFULLY.**

TAKE NOTICE THAT if you fail to appear in response to this Summons, the Court may (1) issue a warrant for your arrest, or (2) conduct a hearing without your presence and grant appropriate relief. Further information concerning the date and consequences of later hearings, if any, may be obtained from the Court by a request in writing.

DATED: _____

BY THE COURT:

Court Administrator

BY _____
Deputy

Served by certified mail
Date: By:

Served personally
Date: By:

In the Matter of the Welfare of:

**Prosecutor's Request
for Disclosure**
File No.

Pursuant to Rule 10.05 of the Minnesota Rules of Procedure for Juvenile Courts, the County Attorney requests the Juvenile to make disclosure of the following items which the Juvenile intends to introduce into evidence at the trial, certification, or Extended Jurisdiction Juvenile hearing: (1) documents and tangible objects; (2) reports of examinations and tests; (3) notice of defenses; (4) names, addresses, and record of criminal convictions or delinquency adjudications of Juvenile's witnesses; (5) statements of Juvenile's witnesses; (6) details of and witnesses to the defense of alibi and (7) record of Juvenile's prior proven or admitted delinquency offenses.

This request for Disclosure incorporates by reference the language of Rule 10.05 and shall be deemed to be a request for disclosure of all information to which the County Attorney is entitled under the provisions of that Rule.

DATED:

County Attorney

(Name)
Assistant County Attorney
(Address)

STATE OF MINNESOTA

DISTRICT COURT - JUVENILE DIVISION

COUNTY OF

JUDICIAL DISTRICT

In the Matter of the Welfare of:

**Prosecutor Notice of
Evidence and Identification
Procedures**
File No.

TO: THE ABOVE-NAMED JUVENILE AND COUNSEL FOR JUVENILE:

Pursuant to Rule 10.02 of the Minnesota Rules of Procedure for Juvenile Courts, you are advised that in the above-captioned case, the Prosecutor has:

_____ Evidence obtained as a result of a search, search and seizure, wiretapping, or other forms of electronic or mechanical eavesdropping;

_____ Confessions, admissions or statements in the nature of confessions made by the child;

_____ Evidence discovered as a result of confessions, admissions or statements in the nature of confessions made by the child;

_____ Identification procedures used during the investigation were:

_____ Line-ups

_____ Observations of the respondent

_____ Exhibition of photographs

_____ Other _____

_____ None of above is known to the prosecution at this time; you will be notified if any is discovered.

DATED:

County Attorney

Assistant County Attorney
(Address)