

# District Court of Minnesota

NINTH JUDICIAL DISTRICT

CHAMBERS OF JUDGE LARRY G. JORGENSEN  
WARREN, MINNESOTA 56762 (218) 745-4951  
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OFFICE OF  
APPELLATE COURTS

FEB 23 1996

FILED

February 21, 1996

Frederick R. Grittner  
Clerk of Appellate Courts  
Minnesota Judicial Center  
25 Constitution Avenue  
St. Paul, MN 55155-6102

Re: Proposed Minnesota Rules of Juvenile Procedure

Dear Mr. Grittner:

Enclosed are 12 copies of the proposed Minnesota Rules of Juvenile Procedure which include changes I have made and which I am submitting as a minority report. I wish to make oral comments as well, so please place me on the agenda for the meeting on February 27th.

Sincerely,

Larry G. Jorgenson  
District Court Judge

LGJ/cm

Enclosures

# **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, to promote the rehabilitation of the child and the protection of the public. These rules shall be construed to achieve these purposes.

COMMENT: The Minnesota Juvenile Court Act directs its attention at the rehabilitation of the child and the protection of the public and the protection of the child's rights. The language inserted addresses those additional concerns by restating the present rule.

## **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) the child's family, which for purposes of these rules is the child's 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; and
- (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.

COMMENT: These rules use "family" in various places. This defines "family".

### **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 interest 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) or 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 any fact or evidence which may be used by the court in deciding any issue in an Omnibus

(Evidentiary) or Adjudicatory proceeding. ~~disposition, or any other including conditions of release, detention, evidence, adjudication, after.~~ The court shall fully disclose to all counsel on the record any attempted ex-parte communication. Communications received in support of an arrest or search warrant, immediate detention order or probation revocation order are deemed not to be ex parte communications for purposes of this rule.

Comment: The nature of Juvenile Court, being rehabilitative, should allow such conversations for purposes of dispositions but not where it involves guilt or the evidence used to arrive at guilt or innocence. The best interests of the child are served by keeping certain disclosures from the child. It is similar to taking certain psychiatric testimony out of the hearing of the child. The information received in support of warrants or detention orders needs also to be excepted.

## **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 or with a misdemeanor that is designated as a juvenile petty offense by the prosecuting attorney pursuant to Minnesota Rules of Juvenile Procedure 17.01, subd. 1(B),~~ 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 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.

COMMENT: The rule was reworded for clarity. The reference to Rule 3.02 subds. 3, 6, and 7 was deleted because it was not needed.

**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.~~ In a detention hearing, 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. 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.~~ In any hearing to determine the child's competency to proceed, 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.

COMMENT: The changes on Subds. 6 and 7 were made to provide consistent language.

### **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, the same counsel may not represent both children if such representation constitutes a conflict of interest. If such a conflict of interest arises at any time during the proceedings, counsel shall immediately advise the court and substitute counsel obtained. ~~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.~~

COMMENT: Attorneys are well aware of conflict of interest problems. Most of the representations now will be by public defenders who are well versed in this area. The attorneys are fully capable of dealing with this issue without the court providing an advisory. As is the case now, if the court recognizes a problem or a potential problem, there are sufficient safeguards to deal with it.

### **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~~ or on the record. The child must be fully and effectively informed of the child's right to counsel and the disadvantages of self-representation by an in-person consultation with an attorney, and counsel shall appear with the child in court and inform the court that such consultation has occurred. If counsel advises the court that the child has been fully and effectively advised of the right to counsel and the advantages and disadvantages thereof, and the child does not wish the attorney to do anything further, the court need not make further inquiry. ~~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.~~

~~consequences, and any additional facts essential to a broad understanding of the case.~~

**Subd. 2. Court Approval/Disapproval.** If the court accepts the child's waiver, it shall state on the record the findings and conclusions that form the basis for its decision.

### **RULE 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.

## **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.

## **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 resulting from an allegation of a delinquent act or from a delinquency adjudication 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.

COMMENT: The additional language clarifies that the rule applies to detentions resulting from an alleged delinquent or a delinquent act and not to an out of home placement resulting from a CHIPS matter or a voluntary placement by the child's parent or guardian.

**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, it reasonably appears that:

- (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.

COMMENT: It is not humanly possible to make a determination with the certainty the rule required.

**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, a gross misdemeanor or a felony.
- (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.

COMMENT: The rule as written did not address certain serious offenses such as Third Degree Assault, a felony or Terroristic Threats, a felony. The additional language is consistent with the current statutory intent. The rule sets out "non-exclusive" factors so the additional language has no negative effect.

**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 and economic or public assistance status. ~~family structure or residential mobility.~~

COMMENT: The rule, as proposed, seeks to address discrimination. That is good. But the language is so broad that it not only prohibits the negative implication of the family structure and residential mobility, it excludes from consideration the positive family structure and permanency of

language is so broad that it not only prohibits the negative implication of the family structure and residential mobility, it excludes from consideration the positive family structure and permanency of a home setting. These matters are valid and important considerations when addressing detention.

## **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.~~

The child shall be brought before the nearest available judge of the district court of the county where the alleged offense occurred or a judicial officer of such court without unnecessary delay and in no event, not more than 36 hours after the child is taken into custody, exclusive of Saturdays, Sundays and legal holidays or a soon thereafter as a judge or judicial officer is available.

COMMENT: The language essentially incorporates the adult rule. It protects the child in the same manner as now for adults.

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

A child taken into custody and not released pursuant to (A) or (B) below shall be brought before the nearest judge of the district court of the county where the alleged offense occurred or judicial officer of such court without unnecessary delay, and in any event, not more than 36 hours after the child is taken into custody, excluding Saturdays, Sundays, and legal holidays or as soon thereafter as such judge or judicial officer is available.

(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 non-exclusive factors set out in Minnesota Rules of Juvenile Procedure 5.0

- (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.

would be adequate.

(C) *When Release is Mandatory.* If a judge is available, 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:

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, subds. 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, Subds. 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, excluding Saturdays, Sundays, and legal holidays or as soon as a judge or judicial officer is available. 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 if known 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 in custody ~~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 or as set forth in the charging document 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.

COMMENT: This is the detention hearing so further consideration of "36 hours" should be moot. Language was added to cover charges filed against the child that may be different than alleged in the application for the "48 hour" hold.

#### **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.

## **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 the alleged offense is a misdemeanor or gross misdemeanor. 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.** All petitions shall be signed by the complainant and verified upon oath or affirmation before a notary public, court administrator, judge, or judicial officer. 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, or charged with a juvenile petty offense or a juvenile traffic offense may be charged by petition. ~~may be charged by petition. A child charged with a juvenile petty offense or a juvenile traffic offense may be charged by petition.~~

COMMENT: The suggested language is more restrictive than the proposed rule because it seems appropriate that an allegation that someone has committed a crime should be made under oath. The rest of the changes are just rewording what was already included.

**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 the~~ 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.

COMMENT: (C) makes no sense. It seems to say that the charging document can be amended but it cannot allege a different offense. What good is an amendment if it cannot change anything?

~~**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.~~

COMMENT: This rule seems unnecessary. The county attorney can dismiss any charge at any time and recharge the offense so it seems that all this rule does is delay matters. Time is quite often of the essence in juvenile matters and this prohibition would seem to work to the detriment of the child.

It still requires the approval of the court.

## **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: Subd. 1 of the rule suggests that the court review all charging documents filed and make an independent determination of probable cause and, finding it lacking, summarily dismiss the document. The court doing such before any hearing and on its own is troublesome, to say the least.

## **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), or 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.

## **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.

### **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, with consent of the county attorney, 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.

COMMENT: On the surface, this rule seems to be appropriate and in most cases it is. However, the county attorney may have additional information which may suggest restrictions be placed on the child that did not appear to be needed at an earlier date. The child should not be allowed to avoid consideration of the restrictions by unilaterally deciding to enter his not guilty plea by other than a personal appearance. The added language allows the county attorney to object if it is believed that a personal appearance by the child is necessary.

## 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.

**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, if it is fair and just to do so, giving due consideration to the reasons advanced by the child in support of the motion and any prejudice the granting the motion would cause the prosecution by reasons actions taken in reliance upon the child's plea, or

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

COMMENT: The added language adds pertinent portion of rule 15.02 of the adult rules of crim procedure to provide for consistency.

**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, or

(C) that the acceptance of the plea is deferred for a specified period of time.

COMMENT: There are times when a plea is not accepted for a specified period of time on the condition that the child remain law abiding. If the child does so for the designated period of time, the petition is dismissed. If the child does not and has a future violation, the plea is accepted and a disposition is ordered. It is a useful tool on minor offenses where the child just does something "stupid."

**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 may permit 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, mental illness or deficiency, duress, alibi, double jeopardy, statute of limitations, collateral estoppel, a defense pursuant to Minn.Stat. 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 [the subject of a petition] [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.

## **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 a hearing. The written motion must specifically set forth the issues raised.

## **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.~~

COMMENT: The implication of this rule goes far beyond its context here. If this rule is adopted, what should be done in adult omnibus hearings, in temporary orders in dissolutions, preliminary

hearings on commitments or on any other matter where a preliminary issue is before the court? In addition to which, the delay it will cause because of the limited judicial resources.

## **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.~~

## **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, and the delay is caused by the prosecuting authority, 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, except petty misdemeanors which must be proved by a fair preponderance of the evidence.

## 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.

COMMENT: What is manifest necessity?

## **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.

## **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, Subds. 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.

## **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 (i) in extraordinary circumstances, the court may extend the time for entering a dispositional order for an additional 60 days. 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.~~

COMMENT: There are valid reasons why a disposition order may not be entered quickly after a finding of guilt. In serious cases, a predisposition evaluation is commonly ordered. It is not unusual for these matters to take 30 to 60 days. For the court to lose jurisdiction in that type of circumstance does not serve the public interest or consider public safety. There are other procedures that can be followed if a judge is dilatory in filing required orders. Judicial sanctions do not belong in juvenile rules.

**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 or approved 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.

COMMENT: Some facilities used for predisposition evaluations are only approved by the Commissioner of Corrections, not maintain by corrections.

**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.

COMMENT: Allocution? Come on.

**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, based upon the dispositional principles adopted in each judicial district pursuant to Chapter 576, Section 59 of the Minnesota Session Laws, shall state set forth in writing the following information:

- (1) why the best interests and rehabilitation 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) How the disposition provides for the public safety.

~~(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.~~

COMMENT: As now written, the rule provides for everything needed in a dispositional order. The stricken portion is either substantive or redundant.

## **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 4.01, or the court may schedule a review hearing and provide notice of the hearing as provided in Minnesota Rules of Juvenile Procedure 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 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, an evidentiary [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,or
- (C) insufficient to provide for public safety.

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

COMMENT: The added language completes the reasons for change.

## **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.

## **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.

Any written plea petition must be signed by both the child and child's counsel.

**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**

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

## **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 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, Subds. 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) *Timing of Revocation Hearing.* If the child is in custody, the arraignment shall occur at or before the detention hearing. If the child denies the allegations of the motion at the admit/deny hearing, the revocation hearing shall occur either immediately after the denial or at some later time provided the child is released. If the child has allegedly committed a new offense, the court may postpone the revocation hearing pending disposition of the new offense. If the court postpones the revocation hearing, it must also order the release of the child unless the court finds, after a detention hearing pursuant to Minnesota Rules of Juvenile Procedure 5, that the child should be detained because of the new offense.

(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 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 § 260.193, 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.

## **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. Upon a showing of good cause, the court may grant the prosecuting attorney an additional ten (10) days beyond the first appearance to file the initiation motion.

The motion shall be in writing and comply with the provisions of Minnesota Rules of Juvenile Procedure 27.01, 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 juvenile court jurisdiction, and (iii) retention of jurisdiction for extended jurisdiction juvenile proceedings.

**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 before the pretrial, if one is scheduled, but in any event, seven (7) days ~~forty-eight (48) hours~~ prior to the time scheduled for the hearing. The reports shall otherwise be confidential.

COMMENT: 48 hours is much to short a time for counsel to prepare if the report is adverse.

**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, including the victim, 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) The child's counsel may make a closing argument.

~~(7) The prosecuting attorney may make a closing argument.~~

~~(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.~~

COMMENT: The burden is on the child; therefore the prosecuting attorney should have final 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 or a similar statute in another state.

COMMENT: It seems the added language is appropriate when the public safety is a concern.

**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;~~

COMMENT: The deleted language is covered in 18.04 subd 3.

(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, Saturdays, Sundays or legal holidays or as soon thereafter as a judge is available.

COMMENT: Saturday added for consistency.

(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, the order shall state why certification 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.

(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.

## **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 27.01 to have the court commence an extended jurisdiction juvenile proceeding when a delinquency petition has been filed pursuant to Minnesota Rules of Juvenile Procedure 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 before the pretrial, if one is scheduled, but in any event, seven (7) days ~~forty-eight (48) hours~~ prior to the time

scheduled for the hearing. The report shall otherwise be confidential.

COMMENT: As in certification, 48 hours is not enough time.

**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, including the victim, 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 29.

(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.~~

COMMENT: bad!

**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 after a hearing based on the court's own motion, motion of the child or the prosecuting authority.

It seems appropriate that early termination of a sentence should be after a hearing in which both parties can be heard.

**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, subs. 1, 2. The probationer has the burden of establishing that he or she will not flee or will not be a danger to any other person or the community.

(D) *Time of Revocation Hearing.* The court shall set a date for the revocation hearing to be held within a reasonable time. If the probationer is in custody as a result of the revocation proceedings, the revocation hearing shall be held within seven (7) days. If the probationer has allegedly committed a new offense the court may postpone the revocation hearing pending disposition of the new offense whether or not the probationer is in custody.

(E) *Record.* A verbatim record shall be made of the proceedings at the probationer's initial appearance.

### **Subd. 3. Revocation Hearing.**

(A) *Hearing Procedures.* The hearing shall be held in accordance with the provisions of Minnesota Rules of Juvenile Procedure 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.

## **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 the court determines 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 the court determines 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~~ shall 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.

COMMENT: The state certainly is entitled to this information.

**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.*

(1) Mental Illness or Mental Deficiency. When a child is found not guilty by reason of mental illness or mental deficiency, 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 the court determines 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 the court determines 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.

## **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.

COMMENT: The appellate courts should set their own rules.

## **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 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.~~

COMMENT: The stricken language would change the law as it now relates to appeals. It is effect would provide for a de novo disposition by the appellate court.

(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. 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), or 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.

## **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.

## **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 per-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, except that the prosecuting attorney may request a review of dispositional order.

(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**

**Subd. 1.** 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.

**Subd. 2.** The court may determine not to appoint a guardian ad litem when:

(A) counsel has been appointed or is otherwise retained for the child, and

(B) 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.

**Subd. 3.** 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 or in a manner established by local custom designed to provide notice contemplated by this rule 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.

## **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 who request such a copy in writing or on the record and to such other persons as the court may direct.

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## **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.

## **RULE 31. TIMING**

### **RULE 31.01 COMPUTATION**

Unless otherwise provided by statute or specific Minnesota Rules of Juvenile Procedure, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or legal holiday. When a period of time prescribed or allowed is three days or less, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. As used in these rules, "legal

holiday" includes New Years's 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.

## **RULE 37. SCOPE, APPLICATION, GENERAL PURPOSE AND CONSTRUCTION**

### **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, 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.