

# Proposed Amendments

## Rules of Juvenile Procedure

### **RULE 3.04 WAIVER OF RIGHT TO COUNSEL**

**Subd. 1. Conditions of Waiver.** The following provision does not apply to Juvenile Petty Offenses, which are governed by Rule 17. Any waiver of counsel must be made knowingly, intelligently, and voluntarily. Any waiver shall be in writing and on the record. The child must be fully and effectively informed of the child's right to counsel and the disadvantages of self-representation by an in-person consultation with an attorney, and counsel shall appear with the child in court and inform the court that such consultation has occurred. In determining whether a child has knowingly, voluntarily, and intelligently waived the right to counsel, the court shall look to the totality of the circumstances including, but not limited to: the child's age, maturity, intelligence, education, experience, ability to comprehend, and the presence of the child's parents, legal guardian, legal custodian or guardian ad litem. The court shall inquire to determine if the child has met privately with the attorney, and if the child understands the charges and proceedings, including the possible disposition, any collateral consequences, and any additional facts essential to a broad understanding of the case.

### **RULE 3.02 APPOINTMENT OF COUNSEL**

**Subd. 8. Appearance before a Grand Jury.** A child appearing before a grand jury as a witness in a matter which is under the jurisdiction of the Juvenile Court shall be represented by an attorney at public expense if the child cannot afford to retain private counsel. If the child has effectively waived immunity from self-incrimination or has been granted use immunity, the attorney for the child shall be present while the witness is testifying. The attorney shall not be permitted to participate in the grand jury proceedings except to advise and consult with the child witness while the child is testifying.

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

Comment to Rule 3.07:

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

### **RULE 3.08 CERTIFICATES OF REPRESENTATION**

A lawyer representing a client in juvenile court, other than a public defender, shall file with the court administrator on the first appearance a certificate of representation.

Once a lawyer has filed a certificate of representation, that lawyer cannot withdraw from the case until all proceedings have been completed, except upon written order of the court pursuant to a written motion, or upon written substitution of counsel approved by the court ex parte.

A lawyer who wishes to withdraw from a case must file a written motion and serve it by mail or personal service upon the client and upon the prosecuting attorney; and the lawyer shall have the matter heard by the court. No motion of withdrawal will be heard within 10 days of a date certain for hearing or trial.

If the court approves the withdrawal, it shall be effective when the order has been served on the client and the prosecuting attorney by mail or personal service and due proof of such service has been filed with the court administrator.

### **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.

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

(A) the child has committed a delinquent act as defined by Minnesota Statutes § 260.015, subd. 5; 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.

**Subd. 3. Warrant for Juvenile Petty or Traffic Offenses.** The court may only issue a warrant for immediate custody of a juvenile petty or juvenile traffic offender or a child

alleged to be a juvenile petty or juvenile traffic offender if the court finds that there is probable cause to believe that:

(A) the child has committed a juvenile petty offense as defined by Minnesota Statutes § 260.015, subd. 21 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. 4. Contents of Warrant for Immediate Custody.**

### **RULE 5.04 RELEASE OR CONTINUED DETENTION**

Comment to Rule 5.04:

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

### **RULE 6.02 TAB CHARGE OR CITATION**

#### **Subd. 3. Contents of Tab Charge or Citation.**

Tab charges or citations shall contain:

(A) the name, address, ~~and~~ date of birth, and race of the child;

### **RULE 6.03 PETITION**

#### **Subd. 3. Contents of the Delinquency Petition.**

Every petition alleging a child is delinquent shall contain:

(D) the name, date of birth, ~~and~~ address, and race of the child;

### **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, race, and residence of the child who is charged;

### **RULE 14.10 COURT AUTHORITY TO DISMISS**

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

(A) The action of the court must be on the record or in writing.

(B) Unless waived by the child, the court must guarantee the child's right to a speedy trial under Minnesota Rules of Juvenile Procedure 13.02, subs. 1 and 2.

(C) The continuance shall be on conditions provided in Minnesota Rules of Juvenile Procedure 14.01 subs. 1 and 2, and shall be subject to limitations stated in Minnesota Rules of Juvenile Procedure 14.01, subd. 3.

(D) The terms of the continuance may be modified on the record or in writing, by the court, with notice to all parties.

(E) Proceedings following the continuance shall be governed by Minnesota Rules of Juvenile Procedure 14.04 - 14.08.

### **RULE 15.03 PREDISPOSITION REPORTS**

**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, counsel for the child, the prosecuting attorney and counsel for the parent(s), legal guardian or legal custodian of the child.

~~[Promulgated to govern actions commenced or arrests made on or after 12 o'clock midnight August 1, 1996.]~~

## **RULE 15.07 PROBATION VIOLATION**

### **Subd. 4. Revocation Hearing.**

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

(1) order a disposition pursuant to Minnesota Statutes § 260.185; 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. 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.~~ The court may issue a warrant for immediate custody of a delinquent child or a child alleged to be delinquent if the court finds that there is probable cause to believe that:

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

(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.

## **RULE 17.03 RIGHT TO COUNSEL**

**Subd. 2. Waiver.** Any waiver of counsel must be knowing, intelligent, and voluntary. A waiver of counsel shall be in writing or made orally on the record.

**Subd. 3. For Appeal.**

**Subd. 4. Parent, Legal Guardian or Legal Custodian as Counsel.**

## **RULE 19.04 HEARINGS ON EXTENDED JURISDICTION JUVENILE PROCEEDINGS**

**Subd. 1. In General.**

(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 up to an additional 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.~~

**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.** ( Moved to Subd. 2 below)~~

**Subd. 2. Initial Appearance and Probable Cause Determination.**

(A) *Timing.* Unless waived by the child, or based upon an indictment, an initial appearance 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. If witnesses are to be called, the court may continue the hearing.

(B) At the initial appearance hearing, the court shall:

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

(2) determine whether all necessary persons are present, and identify those persons for the record,

(3) appoint counsel if not previously appointed,

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

(5) 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

(6) order studies pursuant to Minnesota Rules of Juvenile Procedure 19.03, if appropriate.

(C) Offense Probable Cause. A showing of probable cause to believe that the child committed the offense alleged by the delinquency petition shall be made pursuant to Minnesota Rules of Criminal Procedure 11.

(D) Designation Probable Cause. If the prosecuting attorney has designated the proceeding an extended jurisdiction juvenile prosecution 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.

(E) Waiver. The child may waive a probable cause hearing and permit a finding of probable cause without a hearing, provided that the child does so knowingly, voluntarily, and intelligently on the record after being fully and effectively informed of the right to a probable cause hearing by counsel.

### **Subd. 3. Conduct and Procedure for Extended Jurisdiction Juvenile Hearing.**

## **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 court shall schedule a hearing for the child to enter a plea to the charges. If the child pleads not guilty, the court shall schedule an omnibus hearing prior to the trial and shall also schedule the trial. The trial shall be scheduled pursuant to Minnesota Rules of Juvenile Procedure 13.02, except:

(A) The time shall run from the date of the filing of the extended jurisdiction juvenile order.

(B) In cases where the child is in detention, if the extended jurisdiction juvenile hearing is commenced within thirty days of the prosecution motion for EJJ designation, the trial shall be scheduled within 60 days of the court's order designating the child an extended jurisdiction juvenile; or if the hearing on the motion to designate the child as an extended jurisdiction juvenile is commenced more than thirty days from the filing of the motion, the trial, for a child in detention, shall be commenced within thirty days of entry of the court's order designating the child an extended jurisdiction juvenile.

~~[Promulgated to govern actions commenced or arrests made on or after 12 o'clock midnight August 1, 1996.]~~

## **RULE 19.08 DISPOSITION**

**Subd. 5. Record of Proceedings.** Upon a plea of guilty after a child has been determined to be an Extended Jurisdiction Juvenile, any verbatim record made of the plea and sentencing proceedings shall be transcribed and filed with the court administrator within 30 days after the date of sentencing. Where venue is transferred as provided in Subd. 4, the transcript shall be immediately prepared and filed with the transferring court.



## **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.~~ The court may issue a warrant for immediate custody of the child if the court finds that there is probable cause to believe that:

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

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

(F) Any verbatim record of Extended Jurisdiction Juvenile probation revocation hearings shall be transcribed and filed with the court administrator within 30 days of the date of sentencing.

## **RULE 20.01 PROCEEDING WHEN CHILD IS BELIEVED TO BE INCOMPETENT**

### **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 participation 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, and the child confined in accordance with the provisions of the Minnesota Commitment Act, Chapter 253B.

(2) If it is determined that commitment proceedings are inappropriate and a petition has been filed alleging the child is in need of protection and services (CHIPS), the court shall order such jurisdiction be continued. If the child is not under CHIPS jurisdiction, the court may order the child held for up to seventy-two (72) hours and direct CHIPS proceedings to be initiated.

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