

**REPORT AND PROPOSED AMENDMENTS TO THE  
MINNESOTA RULES OF JUVENILE DELINQUENCY PROCEDURE  
RE: CERTIFICATION PROCEDURE**

**MINNESOTA SUPREME COURT  
JUVENILE DELINQUENCY RULES COMMITTEE**

**CX-01-926**

**March 17, 2006**

Honorable Kathryn N. Smith, Chair

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Kelly Lyn Mitchell  
Staff Attorney

**REPORT TO THE SUPREME COURT  
FROM THE JUVENILE DELINQUENCY RULES COMMITTEE**

On December 19, 2005, the Juvenile Delinquency Rules Committee submitted to the Court its annual report recommending certain amendments to the Rules of Juvenile Delinquency Procedure. The committee had intended to include in that report a proposal relating certification, but did not complete the proposal before the committee's December filing deadline. The committee has since completed that proposal and now submits it for consideration by the Court.

The committee was informed that in at least one county with separate juvenile and criminal divisions, there was confusion as to whether under the rules the juvenile court has authority to issue a stay of the certification order pending appeal. As currently drafted, Rule 21.03, subd. 3(A) *does* allow the court to stay an order for certification pending filing of a final decision on appeal. However, Rule 18.08 states that jurisdiction of the juvenile court terminates immediately upon issuance of the certification order. Thus, some felt the rules placed the stay procedure in limbo, not quite vesting it in the juvenile court, and not quite vesting it in the adult court.

The committee agreed that the motion for stay should be heard and decided by the same judge that issued the original certification order. Therefore, the committee has proposed amendments to Rules 18.08 and 21.03. The proposed amendment to Rule 18.08 is intended to clarify that the juvenile court retains jurisdiction to hear the motion for stay. The proposed amendments to Rule 21.03, subd. 3(A) were intended to clarify that a stay of any juvenile order may be granted by the juvenile court or court of appeals, but the motion must first be presented to the juvenile court. The amendments also remove the language permitting the adult court to grant a stay of the certification order to clarify that the power rests only with the juvenile court or court of appeals, and that the adult court has discretion as to whether the adult proceedings will continue. Other minor amendments have been proposed to change the word "entry" to "file" with respect to the action of the court in issuing an order.

Respectfully Submitted,

JUVENILE DELINQUENCY  
RULES COMMITTEE

**PROPOSED AMENDMENTS  
TO THE RULES OF JUVENILE DELINQUENCY PROCEDURE**

**1. Rule. 18.07. Order**

*Amend Rule 18.07 as follows:*

**Subdivision 1. Decision, Timing, and Content of Order Following Waiver of Certification Hearing and Stipulation to Certification Order.** When a child waives the right to a certification hearing and stipulates to ~~entry of a certification order~~, the court shall, within five (5) days of that hearing, ~~enter~~file an order with written findings of fact and conclusions of law that states:

(A) that adult court prosecution is to occur on the alleged offense(s) specified in the certification order;

(B) a finding of probable cause in accordance with Rule 18.05, subdivision 3, unless the accused was presented by means of an indictment;

(C) findings of fact as to:

(1) the child's date of birth; and

(2) the date of the alleged offense; and

(D) if the child is currently being detained, that:

(1) the child be detained in an adult detention facility; and

(2) the child be brought before the appropriate court (as determined pursuant to Rule 18.08) without unnecessary delay, and in any event, not more than thirty-six (36) hours after ~~issuance~~filing of the certification order, exclusive of the day of ~~issuance~~filing, Sundays, or legal holidays, or as soon thereafter as a judge is available.

**Subd. 2. Decision, Timing, and Content of Order Following Contested Hearing.** Within fifteen (15) days of the certification hearing the court shall ~~enter~~file an order with written findings of fact and conclusions of law as set forth in this subdivision.

(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(s) specified in the certification order;

(2) a finding of probable cause in accordance with Rule 18.05, subdivision 3 unless the accusation was presented by means of an indictment;

(3) findings of fact as to:

(a) the child's date of birth;

(b) the date of the alleged offense;

(c) why the court upheld the presumption of certification under Rule 18.06, subdivision 1 or, if the presumption of certification does not apply but the court orders certification, why public safety, as defined in Rule 18.06, subdivision 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 Rule 18.08) without unnecessary delay, and in any event, not more than thirty-six (36) hours after ~~issuance~~filing of the certification order, exclusive of the day of ~~issuance~~filing, Sundays or legal holidays or as soon thereafter as a judge is available.

*(B) Retention of Jurisdiction by Juvenile Court as an Extended Jurisdiction Juvenile.*

(1) If the court does not order certification in a presumptive certification case, the court shall designate the proceeding an extended jurisdiction juvenile prosecution. The order shall state why certification is not ordered with specific reference as to why designation as an extended jurisdiction juvenile prosecution serves public safety under the factors listed in Rule 18.06, subdivision 3.

(2) If the court does not order certification in a non-presumptive certification case, the court may designate the proceeding an extended jurisdiction juvenile prosecution pursuant to Rule 18.06, subdivision 5(B). The order shall state why certification was not ordered and why the proceeding was designated as an extended jurisdiction juvenile prosecution.

If the court designates the case as an extended jurisdiction juvenile prosecution, the case shall proceed pursuant to Rule 19.09.

*(C) Retention of Jurisdiction by Juvenile Court.* If the court does not order certification or extended jurisdiction juvenile prosecution in a non-presumptive certification case, the order shall state why certification or extended jurisdiction juvenile prosecution was not ordered with specific reference to why retention of the matter in juvenile court serves

public safety, considering the factors listed in Rule 18.06, subdivision 3. Further proceedings shall be held pursuant to Rule 7.

**Subd. 3. 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~~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 Rule 5.

**Subd. 4. Final Order.** Any order issued pursuant to this rule is a final order.

**Subd. 5. Appeal.** An appeal of the final order pursuant to this rule shall follow the procedure set forth in Rule 21.

## 2. **Rule 18.08. Termination of Jurisdiction Upon Certification**

*Amend Rule 18.08 as follows:*

**Subdivision 1. Child Not in Detention.** Once the court ~~enters~~files 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 Rule 18.07, subdivision 2(A)(4).

(B) If the alleged offense was committed in a county other than where certification is ordered, juvenile court jurisdiction terminates in five (5) 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 Rule 21.03, subdivision 3. A motion for stay of the certification order pending appeal shall first be heard by the juvenile court.

### 3. Rule 21.03. Appeal by Child

*Amend Rule 21.03, subd. 3 as follows:*

**Subd. 3. Stay Pending Appeal.** (A) *Generally.* Pending an appeal, a stay may be granted by the ~~trial~~juvenile court or the court of appeals. A motion for stay initially shall be presented to the ~~trial~~juvenile court.

In cases certified to adult court, if a stay was granted by the juvenile 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 Rule 21.03, subdivision 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, section 260B.176.