STATE OF MINNESOTA
IN SUPREME COURT
A-12
(Old File 50747)

IN RE PROPOSED RULES OF PROCEDURE FOR JUVENILE COURT

ORDER

IT IS HEREBY ORDERED that a hearing be had before this court in the Courtroom of the Minnesota Supreme Court, State Capitol, on Tuesday, November 16, 1982, at 9:30 o'clock A.M., before adoption of the Rules of Procedure for Juvenile Court. At that time, the court will hear proponents or opponents of the Proposed Rules of Procedure for Juvenile Court.

IT IS FURTHER ORDERED that advance notice of the hearing be given by the publication of this order once in the Supreme Court edition of FINANCE AND COMMERCE, ST. PAUL/LEDGER, and BENCH AND BAR.

IT IS FURTHER ORDERED that the proposed rules be published in the NORTH WESTERN REPORTER advance sheets.

IT IS FURTHER ORDERED that all citizens, including members of bench and bar, desiring to be heard shall file briefs or petitions setting forth their position and shall notify the Clerk of the Supreme Court, in writing, on or before November 1, 1982, of their desire to be heard on the proposed rules. Ten copies of each brief, petition, or letter should be supplied to the Clerk.

Dated: August 24, 1982

BY THE COURT:

Chief Justice

CITY OF PLYMOUTH

SUPREME COURT
FILED
OCT 18 1982

JOHN McCARTHY
CLERK

October 8, 1982

A-12

Clerk of Minnesota Supreme Court
Honorable John C. McCarthy
230 State Capital
St. Paul, Minnesota 55155

Dear Sir:

This is in response to Rule 6, which deals with the juvenile's right to remain silent and also the admissibility of confession material obtained during the absence of his parents.

As President of the Hennepin County Investigators Council, I have been asked to make known to you our position regarding this rule change.

It is the feeling of the Hennepin County Investigators Council that Rule 6 will be detrimental to the youth of our state, will needlessly hamper law enforcement personnel, and will cause needless back logs of juvenile court cases.

In acting as a detriment to our youth, we feel that this rule will send a dangerous message to Minnesota's young people. They will be quick to learn the right or wrong of their actions is not to be considered in a court of law. Rather, they will learn that the simple absence of their parents will render them immune from all forms of prosecution. Law enforcement personnel are ever vigilant and meticulous in the protection of suspect's rights. This vigilance certainly covers the rights of those persons below the age of majority. This rule will create an artificial facade of innocence for all youthful offenders.

Further, it is the experience of our law enforcement personnel that many juveniles will refuse to confess in the presence of their parents. While the youth may have committed a crime and wants to confess, he will feel an obligation to perform acts that will not bring shame to his parents. If he commits a crime, this is contrary to his parent's values and will frequently cause him to minimize or falsify his actions if his parents are present.

2400 PLYMOUTH BOULEVARD, PLYMOUTH, MINNESOTA 55447, TELEPHONE (612) 559-2800

The absence of his parents will frequently cause the youthful offender to give an honest and candid account of past transgressions without feeling that he has shamed himself in front of his parents.

Our law enforcement personnel are being bombarded constantly with law and rule changes which deal most frequently with the suspect's rights. This rule will act as a needless and time consuming stumbling block which will serve only to further frustrate the efforts of our law enforcement personnel. It will further delay justice, restitution, or other recompense to victims, and will needlessly inconvenience parents, who may be called away from work when interviews might take place. Beyond this, this rule effectively tells our law enforcement personnel that they possess neither the compassion nor the skill to accurately explain a child's rights and to use any subsequent statements to the eventual advantage of person or persons who may have been wronged by a juvenile's acts.

When the Miranda Ruling was formulated, it was done in such a fashion that all persons, inclusive of those with limited intellect, would be able to give an intelligent waiver of his rights. We submit that any child over the age of 12, possessing average intelligence, can understand his rights and respond accordingly. We submit further, that if said juvenile chooses to remain silent, this right would be as equally respected and protected by law enforcement personnel, as those of any adult.

This rule will benefit no one. It will be costly and time consuming to administer. It will create an unneeded level of bureaucracy in an already overcrowded juvenile justice system, and will effectively place school officials in the untenable position of giving and enforcing the law under the Miranda decision.

We respectively petition the court to strike Rule 6 as unworkable, unclear, and legislatively unsound. For the aforementioned reasons, we maintain that this law will work to the detriment of all Minnesota residents.

Most sincerely,

William J. Hanvik
President
HENNEPIN COUNTY INVESTIGATORS COUNCIL
Plymouth, Minnesota

And:

David Peterson
Vice President
HENNEPIN COUNTY INVESTIGATORS COUNCIL

And:

James Berge
Secretary
HENNEPIN COUNTY INVESTIGATORS COUNCIL

WJH:tsw

Hennepin County Investigators Advisory Council

President	Vice President/Treasurer	Secretary
Bill Hanvik	Dave Peterson	Jim Berge
Plymouth Police Dept.	Minnetonka Police Dept.	Golden Valley Police Dept.

October 30, 1982

Clerk
Minnesota Supreme Court
State Capitol
St. Paul, Minnesota 55155

A-12

Dear Clerk:

Please be advised that the Hennepin County Investigators Advisory Council wishes to be heard at the public hearing which is to be held on November 16, 1982, before the Honorable Justices of the Minnesota Supreme Court regarding the proposed Rules of Procedure for Juvenile Court.

Please be advised that the Hennepin County Investigators Advisory Council has taken a position in opposition to the proposed Rule 6. We are opposed to this rule for the reasons outlined in the Minority Report of the Task Force on Rules to the Supreme Court.

We will request that the Court modify this rule as outlined in said Minority Report.

Respectfully submitted,

Bill Hanvik

Bill Hanvik, President
Hennepin County Juvenile Officer's Association

BH:jk

SUPREME COURT
FILED
NOV 1 1982
JOHN McCARTHY
CLERK

11-1 -- copy to each Justice

A-12

County Court

Judge
JAMES W. REMUND

Cottonwood County, Minn.

1044 - 3rd Avenue Box 97, Windom, Minn. 56101

Telephone
(507) 831-4551
(507) 831-4552

TO: Supreme Court of Minnesota

RE: Proposed Juvenile Court Rules

I would like the Court to consider my hereinafter stated comments at it's hearing concerning adoption of the proposed Rules of Procedure for Juvenile Courts.

Regarding Rule 6, I support the position, which I believe will be presented to the Court by Robert Scott as a proposed Minority Report, that Rule 6 should be stricken.

If Rule 6 is not stricken, I would propose that "school staff personnel" be deleted from 6.03. I cannot believe that school personnel would want to or should be required to administer Miranda Warnings. It would also seem that such a requirement would present conflicting approaches and dilemmas to school personnel as between cases involving school discipline and those which may get into the Juvenile Justice System. Further, I can foresee cases which should get into the Juvenile Justice System where the school will not pursue this course because it does not want to be entangled with the requirements of Rule 6. The reasoning apparently utilized with respect to school staff personnel could as easily be applied to employers and other persons or groups having a similar relationship to a given child; such an approach is in my opinion without precedent and not desirable.

James W. Remund, Judge

RAMSEY COUNTY
JUVENILE COURT

GEORGE O. PETERSEN
JUDGE

September 29, 1982

Mr. John C. McCarthy
Clerk of Supreme Court
Minnesota Supreme Court
230 State Capitol
St. Paul, Minnesota 55155

Dear Mr. McCarthy:

I have been designated by the Minnesota County Court Judges Association to appear before the Court on November 16, 1982, to represent the position of the Association and its member judges regarding the Proposed Rules of Procedure for Juvenile Court. Therefore, would you please place my name on the list of those wishing to be heard that day.

On or before November 1, 1982, I intend also to file a brief position paper on behalf of the Association.

Would you please also note that at the hearing I may also wish to address the Court with my personal view of the Rules separately from my presentation on behalf of the Association.

Respectfully,

George O. Petersen
Judge of Ramsey County Juvenile Court

GOP:ceb

Juvenile Service Center
480 Saint Peter
Saint Paul, Minnesota 55102

612-298-4539

CITY OF SAINT PAUL
DEPARTMENT OF POLICE

WM. W. McCUTCHEON, CHIEF OF POLICE
101 East Tenth Street
Saint Paul, Minnesota 55101
612-291-1111

GEORGE LATIMER
MAYOR

October 12, 1982

A-12

Mr. John McCarthy
Clerk
Minnesota Supreme Court
230 State Capitol
St. Paul, Minnesota 55155

Mr. McCarthy:

This letter is intended to serve as notice by the St. Paul Police Department of our desire to be heard on our opposition to the Proposed Rules of Procedure for Juvenile Court.

The Department supports the minority position of the recommendation committee for the reasons addressed in the paper presented by Mr. Robert Scott, Assistant Anoka County Attorney.

If granted an opportunity to be heard, the Department proposes to address the Court with examples of the practical and negative aspects of Proposed Rule 6 and 18.

Sincerely,

Wm. W. McCutcheon
CHIEF OF POLICE

WMcC:ch

OFFICE OF THE CLERK

Supreme Court of Minnesota

St. Paul, Minn.

JOHN McCARTHY
CLERK
WAYNE TSCHIMPERLE
DEPUTY

20 October 1982

Detective Greg Kindle
Ramsey County Juvenile Officers Association
4700 Miller Ave.
White Bear Lake, MN 55110

Dear Detective Kindle:

In Re Rules of Procedure for
Juvenile Court, A-12

Thank you for your interest in this matter. Send your representative to the Supreme Court by 9:30 a. m. on the 16th of November. The hearing begins at that time. Times are not rigorously allotted for individual presentations. If you have any questions, kindly contact me at 296-2581.

Sincerely,

John McCarthy

John McCarthy, Clerk

October 15, 1982

The Minnesota Supreme Court
The Honorable Chief Justice Douglas Amdahl
State Capitol
St. Paul, MN 55110

The Honorable Chief Justice Douglas Amdahl:

It has come to the attention of the Ramsey County Juvenile Officers Association that the Supreme Court Juvenile Justice Study Commission is recommending to the Supreme Court changes in the Proposed Rules of Procedure for Juvenile Court.

It is the position of the Ramsey County Juvenile Officers Association to oppose Rule 6. The change from the present procedure, which is "totality of circumstances" rule, to the proposed Rule 6 would be an undue hardship and burden upon the Police Departments in Ramsey County. The "totality of circumstances" rule which we have followed for many years is based both on the Minnesota Supreme Court decision State vs. Hogan, and also the United States Supreme Court decision Fare vs. Michael.

We have read the minority report on the Proposed Rule Changes for Juvenile Court. The position of the Ramsey County Juvenile Officers Association is in support of the minority report.

We respectfully request your consideration in this matter.

Sincerely,

Greg M. Kindle

Detective Greg Kindle, President
Ramsey County Juv. Officers Assoc.

mb

Copies made and distributed by E. Rowe

OFFICE OF THE COUNTY ATTORNEY
RAMSEY COUNTY
200 LOWRY SQUARE
ST. PAUL, MINNESOTA 55102

TOM FOLEY
COUNTY ATTORNEY

TELEPHONE
(612) 298-4421

October 20, 1982

The Honorable Douglas K. Amdahl
Chief Justice, Minnesota Supreme Court
Capitol Building
St. Paul, Minnesota 55155

Dear Chief Justice Amdahl:

I am writing to support Robert Scott's minority report on the proposed rules of procedure for Juvenile Court. After discussing the rules with members of my staff who work in Juvenile Court, I am convinced that Mr. Scott's recommendations should be adopted by the court.

Rule 6 abandons the "totality of the circumstances" test for admissibility of juvenile confessions. It adopts a rigid requirement that a parent, guardian, or responsible adult be present during an interrogation of a physically restrained child. As I am sure you are aware, juveniles are responsible for a significant percentage of the major crimes in this state. This rigid requirement would hinder the police in their investigations. The cumbersome procedures would delay the investigations unnecessarily. Many metropolitan area juveniles are far more sophisticated and understanding of their rights than their parents. Mr. Scott discusses the reason for opposing this rule thoroughly in his minority report.

Rule 17 deals with intake. I believe that this should continue to be a responsibility of the local prosecutor's office.

Rule 18.09 would require that court hearings be held on Saturdays or Sundays for children who are detained for acts that would not be felonies if they were an adult. I oppose that rule. It would cause hardship for my staff, the Public Defender's Office, and court personnel.

I believe that Rule 51.03 dealing with execution of immediate custody orders should be modified to include social workers. In our county, social workers often ask for police assistance in serving these orders. There are circumstances, however, when a peace officer's presence is not necessary. The typical situation involves an abused infant who is ready for release from the hospital. The court order authorizes the infant's placement in a foster home. The rule could be interpreted to mean that only a peace officer could place the child in a foster home. Many adolescent incest victims are placed by social workers without a peace officer being present. Modifying Rule 51.03 in this manner would not have any effect upon the present law which allows only a peace officer to detain an abused or neglected child for 72 hours without a court order. That statute (260.165) is not addressed in these rules.

Rule 64.02 discusses the availability of Juvenile Court records. Subd. 2(C) deals with the County Attorney's access to these records. It requires the County Attorney's Office to make an ex parte showing to the court whenever they want access to court files in which there has been no action for over one year. Many of these cases involve multiple petitions filed over a number of years. Parents whose parental rights have been terminated often have other children. In deciding whether to file new petitions, it is necessary to have access to court files. This rule makes it unnecessarily cumbersome for the County Attorney to operate in this area. I believe that this rule would add unnecessary obstacles when filing "Spreigl" or "other crime" notices in delinquency matters. It would also make it more difficult to prepare certification cases. At certification hearings, the entire past court history of the juvenile is important.

Our office deals with over 4,000 delinquency petitions a year and hundreds of dependency and neglect petitions. Many of these matters are handled without opening up a file in our office. It would be an enormous clerical burden for us to have to make a file for every petition that goes to Juvenile Court. We rely upon the completeness of the court files when preparing cases.

Thank you for considering these comments.

Sincerely,

Tom Foley

TOM FOLEY
Ramsey County Attorney

A-12

The Hennepin County Chiefs of Police Association

Craig Swanson, President
Richard Carlquist, Vice-President
Thomas Morgan, Secretary-Treasurer
James Franklin, Chaplin

* * * * * * * *

October 15, 1982

The Justices of the Supreme Court
State of Minnesota
% John McCarthy
Clerk of the Supreme Court
230 State Capitol
St. Paul, Minnesota

Re: IN RE PROPOSED RULES OF PROCEDURE
FOR JUVENILE COURT

Dear Justices:

The members of the Hennepin County Chiefs of Police Association, at it's October meeting in Robbinsdale, Minnesota, voted unanimously to request the Minnesota Supreme Court to strike Rule Six from the above proposed rules for the following reasons:

1) The rule is inconsistant with the holdings of the United States Supreme Court and the Minnesota Supreme Court approving the "totality of circumstances" test rather than the requirement of a parent's presence in determining the admissability of a juvenile confession.

2) The rule enlarges the substantive rights of a juvenile in violation of M.S.A. 480.059, Subd. 1, which states: "Such rules shall not abridge, enlarge, or modify the substantive rights of any person".

3) The rule violates the legislative intent that allows juveniles 12 years of age or older to waive their rights without a parent's consent or presence (M.S.A. 260.155, Subd. 8).

4) The rule may be in violation of 2 MCAR Section 1.205 which allows the juvenile to deny his or her parents access to private data about himself or herself.

5) The rule enlarges the scope of Miranda to cover school staff personnel and parole and probation officers when the Miranda decision was specifically held to be applicable only to police.

The Association encourages the Justices of the Minnesota Supreme Court to review the "Minority Report to the Proposed Juvenile Court Rules" by Assistant Anoka County Attorney Robert Scott.

Thank you for your consideration of our concerns in this matter.

Sincerely,

Thomas A. Morgan, Jr.

Thomas A. Morgan, Jr.
Secretary-Treasurer

TAM/lje

city of richfield
6700 portland avenue • minnesota 55423

October 25, 1982

The Justices of the Supreme Court
State of Minnesota
c/o Mr. John McCarthy
Clerk of the Supreme Court
230 State Capitol
St. Paul, Minnesota 55101

A-12

Dear Justices:

As a member Chief of the Hennepin County Chief's of Police Association and the Minnesota Chief's of Police Association, I support their position in opposing Rule Six and Rule Eighteen of the proposed new Rules of Procedure for Juvenile Court.

Rule Six appears to be contrary to numerous statutes, court rules and supreme court decisions at both the State and Federal levels. A more logical determining factor on the admissability of juvenile confessions is found in the present system of the "totality of circumstances" test. This test has been found widely acceptable across the nation. The rule should be stricken.

Rule Eighteen, requiring that a juvenile be released from detention within thirty-six hours if the court has not ordered continued detention, and within twenty-four hours if a request for detention hearing has been made and the court has not ordered continued detention should be stricken or substantially changed to allow for Sundays and holidays. Also, the time in detention should begin at midnight of the day of detention to more closely follow the adult rules as stipulated in the Minnesota Rules of Criminal Procedure.

Assistant Anoka County Attorney, Mr. Robert Scott, has prepared and submitted to the Court, a document entitled, "Minority Report to the Proposed Juvenile Court Rules". This report appears to have been prepared after a great deal of research and is based on sound logic in arguing against both of these proposed rules.

Respectfully submitted,

Thomas A. Morgan

Thomas A. Morgan, Jr.
Director of Public Safety

TAM/lje

telephone: 869-7521 (612)
an equal opportunity employer

INDEPENDENT DISTRICT No. 390

ADMINISTRATION

Daniel A. Skoog, Superintendent/
634-2735 Elementary Principal
David W. Meade, Secondary Principal
634-2510
Randall S. Nelson, Counselor
634-2510

LAKE OF THE WOODS SCHOOLS

DISTRICT OFFICE AT

Baudette, Minnesota 56623

BOARD OF DIRECTORS

Jerry Pieper, Jr., Chairman
Nancy Humeniuk, Clerk
Donavon Smith, Treasurer
Roger Knutson, Director
Lawrence J. Lorbiecki, Director
Robert D. Bragdon, Director

October 20, 1982

The Supreme Court of Minnesota
State Capitol Building
St. Paul, Minnesota
55101

Re: Proposed Rules of Procedure For Juvenile Court

If the purpose of the juvenile justice system in Minnesota is to cause a wayward juvenile the opportunity for self-correction with as little fuss as possible, it seems that the proposed rules of procedure do as much as can be done to defeat the purposes of the juvenile justice system, as least in so far as I know it to operate in our area.

Rule Six in particular will effectively bar any court action on a matter discovered in an interrogation held in a school. School personnel are not going to read a student the "Miranda Warning" when dealing with school matters, and are not going to halt an interrogation to get a student's parents into the school so that the student can be given the warning.

In our area, most parents live and/or work at some distance from the school. Many work in a town forty miles away and ride in car pools. It is totally impractical to expect them to be at school within a "reasonable" time, as provided for in Rule 6.04.

What is the interpretation of the word "reasonable"?

If the schools are to work with the juvenile justice system, and vice versa, which is necessary for the intelligent rehabilitation of wayward youth, it seems that Rule Six sets up unnecessary barriers to this cooperation, and will make it virtually impossible to bring many matters to the attention of juvenile authorities.

I would therefore urge that Rule Six be either eliminated or substantially revised.

Sincerely yours,

David W. Meade
High School Principal

cc: Minnesota Association of
Secondary School Principals

SUPREME COURT
FILED
OCT 22 1982
JOHN McCARTHY
CLERK

CITY OF WAYZATA
600 RICE STREET, WAYZATA, MINN. 55391
PHONE 473-0234

26 October 1982

The Justices of the Supreme Court
State of Minnesota
c/o Mr. John McCarthy
Clerk of the Supreme Court
230 State Capital
St. Paul, MN 55101

A-12

Dear Justices,

As a member chief of the Hennepin County Chiefs of Police Association and the Minnesota Chiefs of Police Association, I support their positions in opposing Rule Six and Rule Eighteen of the proposed new Rules of Procedure for Juvenile Court.

Rule Six appears to be contrary to numerous statutes, court rules, and supreme court decisions at both the State and Federal levels. A more logical determining factor on the admissability of juvenile confessions is found in the present system of the "totality of circumstances" test. This test has been found widely acceptable across the nation. The rule should be stricken.

Rule Eighteen, requiring that a juvenile be released from detention within thirty-six hours if the court has not ordered continued detention, and within twenty-four hours if a request for detention hearing has been made and the court has not ordered continued detention should be stricken or substantially changed to allow for Sundays and Holidays. Also, the time in detention should begin at midnight of the day of detention to more closely follow the adult rules as stipulated in the Minnesota Rules of Criminal Procedure.

Assistant Anoka County Attorney, Mr. Robert Scott, has prepared and submitted to the Court a document entitled, "Minority Report to the Proposed Juvenile Court Rules". This report appears to have been prepared after a great deal of research and is based on sound logic in arguing against both of these proposed rules.

Respectfully submitted,

David A. Brehm
Chief of Police
Wayzata Police Department

CITY OF NEW HOPE 4401 Xylon Avenue North New Hope, Minnesota 55428 Phone: 533-1521

October 25, 1982

The Justices of the Supreme Court
State of Minnesota
c/o Mr. John McCarthy
Clerk of the Supreme Court
230 State Capitol
St. Paul, Minnesota 55101

A-12

Dear Justices:

As a member of the Hennepin County Chiefs of Police Association and the Minnesota Chiefs of Police Association, I support their positions in opposing Rule Six and Rule Eighteen of the proposed new Rules of Procedure for Juvenile Court.

Rule Six appears to be contrary to numerous statutes, court rules and supreme court decisions at both the State and Federal levels. A more logical determining factor on the admissibility of juvenile confessions is found in the present system of the "totality of circumstances" test. This test has been found widely acceptable across the nation. The rule should be stricken.

Rule Eighteen, requiring that a juvenile be released from detention within 36 hours if the court has not ordered continued detention, and with 24 hours if a request for detention hearing has been made and the court has not ordered continued detention should be stricken or substantially changed to allow for Sundays and holidays. Also, the time in detention should begin at midnight of the day of detention to more closely follow the adult rules as stipulated in the Minnesota Rules of Criminal Procedure.

Assistant Anoka County Attorney, Mr. Robert Scott, has prepared and submitted to the Court, a document entitled "Minority Report to the Proposed Juvenile Court Rules." This report appears to have been prepared after a great deal of research and is based on sound logic in arguing against both of these proposed rules.

Respectfully submitted,

Colin J. Kastanos
Director of Police
New Hope Police Department

CJK/ks

CITY OF
EDINA
4801 WEST 50TH STREET, EDINA, MINNESOTA 55424
612-927-8861

October 25, 1982

The Justices of the Supreme Court
State of Minnesota
% Mr. John McCarthy
Clerk of the Supreme Court
230 State Capitol
St. Paul, MN 55101

A-12

Dear Justices:

As a member chief of the Hennepin County Chiefs of Police Association and the Minnesota Chiefs of Police Association, I support their positions in opposing Rule Six and Rule Eighteen of the proposed new Rules of Procedure for Juvenile Court.

Rule Six appears to be contrary to numerous statutes and court rules at both the State and Federal levels. A more logical determining factor on the admissibility of juvenile confessions is found in the present system of the "totality of circumstances" test. This test has been found widely acceptable across the nation. The rule should be stricken.

Rule Eighteen, requiring that a juvenile be released from detention within thirty-six hours if the court has not ordered continued detention, and within twenty-four hours if a request for detention hearing has been made and the court has not ordered continued detention should be stricken or substantially changed to allow for Sundays and holidays. Also, the time in detention should begin at midnight of the day of detention to more closely follow the adult rules as stipulated in the Minnesota Rules of Criminal Procedure.

Assistant Anoka County Attorney, Mr. Robert Scott, has prepared and submitted to the Court a document entitled, "Minority Report to the Proposed Juvenile Court Rules." This report appears to have been prepared after a great deal of research and is based on sound logic in arguing against both of these proposed rules.

Respectfully submitted,

Craig G. Swanson
Chief of Police
Edina Police Department

CGS:nah

CITY OF
maple grove
9401 FERNBROOK LANE / MAPLE GROVE, MINNESOTA 55369 – 9746 / PHONE 425-4521

POLICE DEPARTMENT

October 27, 1982

Justices of the Supreme Court
State of Minnesota
c/o Mr. John McCarthy, Clerk of the Supreme Court
230 State Capitol
St. Paul, MN 55101

A-12

Dear Justices:

As a member Chief of the Hennepin County Chief's of Police Association, the Minnesota Chief's of Police Association, and as Liaison between the Hennepin County Chief's of Police Association and the Hennepin County Juvenile Advisory Council, I support their positions in opposing Rule 6 and Rule 18 of the proposed New Rules of Procedure for Juvenile Court.

Rule 6 appeares to be contrary to numerous statutes. Court rules and Supreme Court decisions at both the State and Federal levels. A more logical determining factor on the admissibility of juvenile confessions is found in the present system of the "totality of circumstances" test. This test has been found widely acceptable across the nation. Rule 6 should be striken.

Rule 18 requiring that a juvenile be released from detention within 36 hours if the court has not ordered continued detention and within 24 hours if a request for detention hearing has been made and the court has not ordered continued detention, should be striken or substantially changed to allow for Sundays and Holidays. Also, the time in detention should begin at midnight of the day of detention to more closely follow the adult rules as stipulated in the Minnesota Rules of Criminal Procedure.

Assistant Anoka County Attorney, Mr. Robert Scott has prepared and submitted to the Court, a document entitled Minority Report to the Proposed Juvenile Court Rules. This report appears to have been prepared after a great deal of research and is based on sound logic in arguing against both of these proposed rules, namely Rule 6 and Rule 18.

Your professional attention to these matters will be greatly appreciated by myself and those involved in the Criminal Justice System.

Respectfully Submitted,

Robert A. Burlingame

Robert A. Burlingame
Chief of Police
City of Maple Grove

ERNEST J. VANDERHYDE

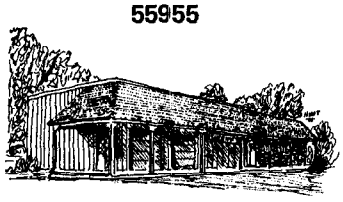
SHERIFF OF DODGE COUNTY

Tele. 507/635-2271

MANTORVILLE, MINNESOTA

55955

WILLIAM J. WEBER
Chief Deputy
KASSON, MINN. 55944
507/634-7807



Dodge County Sheriffs Office

KATHY CLAASSEN
Secretary - Records
MANTORVILLE, MINN. 55955
507/635-5153

October 26, 1982

The Justices of the Supreme Court
State of Minneosta
c/o John McCarthy
Clerk of the Supreme Court
230 State Capitol
St. Paul, Minn. 55155

A-12

Dear Justices:

In reviewing the "Proposed Rules of Prodedure for Juvenile Court", there seems to be areas of conflict and contradiction in Rule Six which would further complicate criminal procedures involving Juveniles. It is felt that Rule Six should be eliminated.

Rule 18 Subd. 1 (B) MANDATORY RELEASE, should be amended to read "with the exclusion of Saturdays, Sundays and Holidays". In the event a Juvenile was apprehended in a burglary on a Friday night, the Juvenile would according to this proposal have to be released on Sunday, prior to any proper proceedure of handling the situation.

Sincerely,

Ernest J. Vanderhyde

Ernest J. Vanderhyde
Sheriff of Dodge County

EJV:kc

"SMILE CITY"

CITY OF LITCHFIELD POLICE DEPARTMENT

MEMBER MINNESOTA CHIEFS OF POLICE ASSOCIATION

RALPH HITCHENS, CHIEF

326 N. RAMSEY - LITCHFIELD, MINNESOTA 55355 - PHONE (612) 693-3513

October 25, 1982

A-12

The Justices of the Supreme Court
State of Minnesota
% Mr. John McCarthy
Clerk of the Supreme Court
230 State Capitol
St. Paul, MN 55101

Dear Justices:

As a member chief of the Hennepin County Chiefs of Police Association and the Minnesota Chiefs of Police Association, I support their positions in opposing Rule Six and Rule Eighteen of the proposed new Rules of Procedure for Juvenile Court.

Rule Six appears to be contrary to numerous statutes, court rules and supreme court decisions at both the State and Federal levels. A more logical determining factor on the admissability of juvenile confessions is found in the present system of the "totality of circumstances" test. This test has been found widely acceptable across the nation. The rule should be stricken.

Rule Eighteen, requiring that a juvenile be released from detention within thirty-six hours if the court has not ordered continued detention, and within twenty-four hours if a request for detention hearing has been made and the court has not ordered continued detention should be stricken or substantially changed to allow for Sundays and holidays. Also, the time in detention should begin at midnight of the day of detention to more closely follow the adult rules as stipulated in the Minnesota Rules of Criminal Procedure.

Assistant Anoka County Attorney, Mr. Robert Scott, has prepared and submitted to the Court, a document entitled, "Minority Report to the Proposed Juvenile Court Rules". This report appears to have been prepared after a great deal of research and is based on sound logic in arguing against both of these proposed rules.

Respectfully submitted,

Ralph N. Hitchens
Chief of Police

RNH/js

A-12

2660 CIVIC CENTER DRIVE TELEPHONE 484-3371 roseville MINNESOTA 55113

October 27, 1982

Mr. John McCarthy
Clerk of the Minnesota Supreme Court
230 State Capitol
St. Paul, Minnesota 55155

Dear Mr. McCarthy:

I am writing to express my opposition to the new Juvenile Court Rules now before the Supreme Court.

While I'm certain that the new rules are well-intended, I'm equally convinced that subscribing to these rules could result in hindering the process of justice.

In my twenty-three years of law enforcement experience, I have been involved with and observed many juveniles arrested (the majority involving fifteen to eighteen years of age). The crimes they were arrested for range from minor property crimes to serious assaults, and homicide. I cannot recall even one juvenile who had a problem understanding his/her rights. On a comparison basis, it has been my experience that juveniles have a better grasp on their rights than do most adults.

My point is this: Rule 6 requires the parent(s) or guardian be present before a peace officer, probation officer, parole officer or school staff person can question a child. On numerous occasions, parents have responded to the notification of their child's involvement by refusing to meet with police: "I'll be down tomorrow to pick him up;" or, "Throw them in jail and throw away the key;" or, "Haven't you cops got anything better to do than pick on my kids."

I also have concern with proposed rules 17. The Judicial Branch of Government should not be involved in screening cases to be presented to the court. This is, in my opinion, totally unnecessary because the court can always withhold adjudication after a case has been proven, should it feel it to be in the best interest of the child to do so.

I am concerned with the time requirements of Rule 18. Unlike the adult thirty-six hour rule, Rule 18 gives no consideration to holidays and week-ends.

In Rule 51.03, subdivision 2 states that, "The order for immediate custody shall be executed by taking the child into custody." In many abuse cases, it is unnecessary for a peace officer to actually take the child into custody.

I have attempted to be brief in relating a few of the major problems that I foresee in the proposed rules. I sincerely request that you weigh these issues and ultimately discard them in favor of adopting the minority report offered by Robert Scott.

I thank you in advance for considering my viewpoints.

Sincerely,

James D. Zelinsky
Chief of Police
City of Roseville

JDZ/bz

10-28-- copy to each Justice

Minnesota Police & Peace Officers Association

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October 14, 1982

Clerk
Minnesota Supreme Court
State Capitol
Saint Paul, Minnesota 55155

A-12

Dear Clerk:

Please be advised that the Minnesota Police and Peace Officers Association wishes to be heard at the public hearing which is to be held on November 16, 1982, before the Honorable Justices of the Minnesota Supreme Court regarding the proposed Rules of Procedure for Juvenile Court.

Please be advised that the Minnesota Police and Peace Officers Association has taken a position in opposition to the proposed Rule 6 and to the proposed Rule 18.09. We are opposed to these two proposed rules for the reasons outlined in the Minority Report of the Task Force on Rules to the Supreme Court.

We will request that the Court modify these two provisions of the proposed rules as outlined in said Minority Report.

Respectfully submitted,

Robert D. Burch
President, MP&POA

by

Gerald R. Kittridge
Executive Director

RDB:GRK/gp

A-12

minneapolis

city of lakes

MINNEAPOLIS POLICE DEPARTMENT
ROOM 119, CITY HALL #348-2853
MINNEAPOLIS, MINNESOTA 55415
Anthony V. Bouza
CHIEF OF POLICE

October 25, 1982

Mr. John McCarthy, Clerk of Supreme Court
CAPITOL BUILDING
230 State Capitol
St. Paul, Minnesota 55155

Sir,

This letter is to advise you that the Minneapolis Police Department opposes proposed Rule 6.

Two representatives from our department - Deputy Chief of Investigation Bernard Jablonski and Commander of the Juvenile Division Captain Wayne Hartley - will attend the hearing to be held on Tuesday, November 16, 1982, at 9:30 a.m.

The enclosed study serves as our petition/brief setting forth our position on this very important matter.

Sincerely,

Anthony V. Bouza

ANTHONY V. BOUZA
CHIEF OF POLICE
MINNEAPOLIS POLICE DEPARTMENT

AVB:BAJ:mls

10-25 copy of letter and study to each Justice

MINNEAPOLIS POLICE DEPARTMENT

A Study of Proposed Rule 6

for

Minnesota Juvenile Courts

Prepared by

Captain Wayne Hartley

Juvenile Division

The Minneapolis Police Department opposes Rule 6 of the proposed Rules of Procedure for Minnesota Juvenile Courts. We will not address the legal ramifications of the proposed rule for we feel that the position paper written by Assistant County Attorney Robert Scott of Anoka County addresses our interest and objections very clearly. We will address the practical and monetary aspects of the proposed rule.

> "Too drunk to come in."
>
> "Child on run - not living at home."
>
> (Mother) "I'm going fishing - go ahead and interview."
>
> "Child not living at home. Father would not return call to our office. From past experience with father, don't believe he's interested in daughter's welfare. Released to friend of family at 1605 hours. Father refused to pick her up."

These statements came from a survey which was initiated to determine the estimated amount of time necessary to complete a case once a juvenile had been arrested. The study was of two weeks duration in May and was repeated for another two weeks in September. We do not claim that this was done by entirely scientific methodology. However, we do believe that the informa- given, taken in light of the experience of professional police officers, does indicate some of the difficulties which would be encountered were Rule 6 to be adopted.

From May 17, 1982 through May 29, 1982 investigators of the Minneapolis Police Department Juvenile Division interviewed 113 juveniles. These juveniles were arrested for a variety of offenses from misdemeanor to felony. The ages of those arrested ranged from eight to seventeen. We found that of those 113 juveniles arrested, 16 were from outside the city. While most of the juveniles were from one of the suburbs or from our sister city, St. Paul, we did have one 17 year old girl whose parents lived in Chicago, Illinois and who

had no relatives or guardians in the metropolitan area. We further found from our sample group:

11 juveniles did not live at home with their parents.

36 times parents were not available.

13 times parents refused to come in to pick up their child.

In the second sampling conducted September 9, 1982 through October 1, 1982, 74 juveniles were interviewed with similar results in respect to their residences and parental availability:

6 lived outside Minneapolis.

11 did not live at home.

25 parents were unavailable.

6 parents refused to come in.

From the police perspective, there are several ramifications to these figures which immediately come to mind. Is the juvenile offender who has been taken into custody going to be handled by the police quickly? How much additional time is the juvenile going to have to spend in detention? Will larger holding areas have to be provided for those being held? What alternatives are going to have to be adopted when parents refuse to come in or are incapable of so doing?

The answer to the first question is obvious. The police will be unable to process the young offender through the system quickly because of the additional requirements of proposed Rule 6. As indicated above, many parents or guardians are not available. Consequently, the juvenile, no matter how sophisticated, would have to wait in detention for the arrival of a parent or legal guardian.

In our survey document, we had investigators indicate the amount of time it took them to complete a case under our present rules of procedure and to estimate the amount of time necessary to complete a case under the proposed rules. We found that the total average time increased from 2.3 hours to 5.95 hours. (See attachment "A") In practical terms, the juvenile offender would be incarcerated over two and one half times longer under the proposed rules of procedure. Does this actually serve justice and the needs of the juvenile?

We realize that police expertise alone cannot be made the sole criteria as to whether a juvenile is of sufficient sophistication so as to intelligently waive the right of self-incrimination. However, we would submit that the police in many instances can take a much more objective view than a parent who has by their own actions indicated little concern or respect for the welfare of their progeny. We would further submit that the system as it is now working in Hennepin County has sufficient safeguards through the County Attorney's office and the Juvenile Court where the totality of circumstances can be weighed so as to provide for the needs and welfare of the juvenile offender.

There is another aspect that is of particular concern to this police department. This is the matter of the cost of investigating crimes which are committed by juveniles. Everyone is aware that government is in dire straits regarding its financial situation. Fewer people are being asked to do more and more work. In January of 1982, the Juvenile Division had 33 investigators and currently has been cut back to 28 investigators. These figures would be even more dramatic if one went back several years. While we do not disagree that productivity must be increased in all governmental endeavors, we do feel that there is a point of diminishing returns. Those who will suffer ulti-

mately are those who most need our help, the victims of crime and the juvenile offender.

A police investigator is an expensive item in the city budget. A conservative estimate indicates that a single investigator costs approximately $23.63 per hour. Thus the investigation that would cost approximately $54.34 presently would increase to $140.59. (See attachment "B") We realize that this again cannot be the only criteria, but submit that it is an important item. We feel that we can continue to obtain reasonably good results and be relatively effective under the "Hogan Rule," but believe that the increased time and effort required under proposed Rule 6 would make the monetary costs oppressive.

We spoke above concerning the parent's inability or unwillingness to come to the juvenile's place of detention to assist in the administration of justice. We also quoted from the remarks section of our survey document. Permit us to expand and include other remarks and indications of parental concern given to our investigators. One mother's excuse for not coming in from St. Paul to pick up her 13 year old son was, "I've got no car." We talked with a 17 year old boy who had not seen his mother in six years and was on his own. A 12 year old boy turned himself into the police because he said his mother beats him. Another mother refused to pick up her daughter saying, "Let her sit there for a couple of days - she's been causing me all kinds of trouble." And the list of remarks goes on.

Indeed, some parents were responsive and concerned about their juvenile's welfare and behavior, but it is obvious that there are many who care little for the child or care what the child is doing. Perhaps their indifference is part of the cause of the juvenile creating a situation whereby he comes

under the purview of the police. It is not uncommon for parents and children alike to be involved together in criminal activities. Recently a mother and 14 year old daughter were both arrested on prostitution charges. They were working the street together. Should these parents too be given the opportunity to guide their children?

Another aspect of the problem arises when parents become the victim of the juvenile's criminal activity. This is not an uncommon event. Frequently the juvenile who has run from home or is in an institution as a result of parents being unable or unwilling to cope with the anti-social behavior displayed by their child, burglarizes the family residence. Should this parent also be allowed to give permission for the police to interview their juvenile offender?

Thus we believe that the current case law as set forth in the State v. Hogan is a far superior method in determining the admissibility of a juvenile's confession. The costs in both time and monetary considerations of Rule 6 would be prohibitive. The objective study of the merits of a juvenile's confession, we feel, can be assessed by the professional jurist in a dispassionate manner rather than by a parent or guardian who may be embarrassed, indifferent, confused, angered or in collusion with the offender.

INTEROFFICE COMMUNICATION
MINNEAPOLIS POLICE DEPARTMENT
MPD 5116 R(3/78)

TO: CAPT. WAYNE HARTLEY
JUVENILE DIVISION

DATE: OCTOBER 12, 1982

FROM: DOUGLAS HICKS
CRIME ANALYSIS UNIT

SUBJECT: SUMMARY OF DATA FROM OFFICER SURVEYS REGARDING INITIAL TIME TO RESOLVE JUVENILE CASES

On Thursday, Oct. 7, 1982, you requested that I examine a survey which you gave on two separate occasions (May and September, 1982) to officers to document the amount of time it took them to initially handle a juvenile case under present procedures and how much time they would estimate it would take if they were required to have one of the juvenile's parents, a guardian, or attorney present before questioning. Below are the results, after eliminating surveys with only one time or a time greater than 48 hours. Times on the surveys were converted to hours and/or fractions of hours.

In May, officers estimated it would take them 195.8% more time to handle the same cases under the new procedures; in September 70% longer; and for the total 155.23% more time.

		CURRENT	PROPOSED
MAY	98 Surveys		
	TOTAL TIME	245.5 hrs	726.25 hrs
	AVERAGE TIME	2.5 hrs	7.4 hrs
SEP	58 Surveys		
	TOTAL TIME	118.21 hrs	202 hrs
	AVERAGE TIME	2 hrs	3.48 hrs
TOTAL	156 Surveys		
	TOTAL TIME	363.6 hrs	928.25 hrs
	AVERAGE TIME	2.3 hrs	5.95 hrs

Please let me know if you have questions or if there is anything else you need.

ATTACHMENT "A"

INTEROFFICE COMMUNICATION
MINNEAPOLIS POLICE DEPARTMENT
MPD 5116 R(3/78)

TO: CAPT. WAYNE HARTLEY DATE: OCTOBER 7, 1982

FROM: DOROTHY McMASTER SUBJECT: PER YOUR REQUEST

Cost associated with one hour of investigative sergeant's time

Annual salary of sergeants assigned to investigative units (excl. precincts)	$ 30,879*	$ 30,879
Fringe Benefits:		
Pension	4,750	
Life insurance	41	
Health insurance	1,850	
Severance	216	
Uniform allowance	275	
Workmen's compensation (Est. at 5% of salary)	1,544	
Total		8,676
Total salary and fringe benefits		$ 39,555
Equipment costs:		
Squad rental (7,787 miles at 41¢ per mile) est.	3,200	
Radio communications equipment	527	
Total		$ 3,727
TOTAL DIRECT COSTS.....		$ 43,282
Total hours in a workyear.....		2,080
Non-productive hours:		
Vacation at 16 days	128	
Holidays (11)	88	
Sick leave (12 available; assumed 4 used)	32	
Total		(248)
Balance: Productive hours available.....		1,832
Cost per hour (Direct costs ÷ productive hours)		$ 23.63

Note: This is a conservative estimate INASMUCH AS IT DOES NOT TAKE ANY 1983 salary increase into consideration, nor does it include any additives for departmental administrative costs.

*Average taken from 1983 budget document.

ATTACHMENT "B"

Totality of Circumstances Inquiry for Juveniles

Interviewed by Minneapolis Police Officers

Juv's name_____ Date of Interview_____

Address_____ Time of Interview_____

Date of Birth	School Grade Completed	No. of Prior Police Contacts/Arrests		Sophistication Level	Other Background Information
		Misd.	Felony		

Actual time expended on completion of case _____

Estimated time if new rule was in use _____

As interviewing officer, do you believe that the above listed juvenile is capable of fully understanding his/her Miranda rights and the willingness to waive same?

Yes/No

Guardian Contact:

Date and Time Notified_____

Who was Notified?_____ Relationship_____

Address and Phone No. of Person Notified_____

_____

Guardian's Response - (Refusal to come in, permission for interview without their presence, child on run or not living at home, etc.)_____

_____

_____

_____

Does the guardian believe the sibling is capable of understanding the Miranda rights?

Yes/No

Signature of interviewing officer

_____

ATTACHMENT "C"

A-12

UNIVERSITY OF MINNESOTA
TWIN CITIES

Law School
285 Law Center
229 19th Avenue South
Minneapolis, Minnesota 55455
(612) 373-2717

October 28, 1982

Mr. John McCarthy
Clerk
Minnesota Supreme Court
230 State Capital
St. Paul, MN 55155

Dear Mr. McCarthy:

Enclosed are ten copies of a petition In re Proposed Rules of Procedure for Juvenile Court, File #A-12.

I respectfully request the opportunity to be heard by the Minnesota Supreme Court regarding the Proposed Juvenile Court Rules. I want to make an oral presentation elaborating on this petition.

Thank you for your consideration in this matter.

Very truly yours,

Barry C. Feld
Professor of Law

BCF/dkm

Enclosures

10-29-- copy to each Justice

373-0071 -- left message with Feld - o.k. to appear

STATE OF MINNESOTA

IN SUPREME COURT

In re Proposed
Rules of Procedure for
Juvenile Court
File #A-12

Petition

and

Request to be Heard
Regarding Proposed
Juvenile Court Rules

Barry C. Feld
Professor of Law
340 Law School
University of Minnesota
Minneapolis, Minnesota 55455
Telephone: (612) 373-0071
Petitioner

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Introduction

This petition addresses a number of legal and policy issues raised by the Proposed Rules of Procedure for Juvenile Court for Delinquency and Petty Offenders. I also request permission to make an oral presentation to the Minnesota Supreme Court to elaborate on the analysis contained in this petition.

Although the Rule Drafting Committee is to be commended for attempting to develop Rules of Procedure for Juvenile Courts with applicability throughout the State of Minnesota, a number of the specific proposals represent unwarranted and ill-advised extensions of or departures from existing rules, statutes, case law, and should be substantially modified before final adoption. Many of the recommendations raise fundamental philosophical questions about the role and function of the juvenile court in Minnesota, and represent policy choices which are at odds with the reality of juvenile justice, as well as recent legislative and judicial directives. This critique will analyze the more troublesome proposed rules sequentially, considering the more fundamental legal and philosophical issues they raise.

Proposed Rule 5. Guardian Ad Litem

Proposed Rule 5 represents a departure from Minnesota Statute § 260.155, Subd. 4 (a) and (b), as well as from the current Minnesota Rules of Juvenile Court 9-1 and 9-4. By placing the burden on the court to justify any non-appointment of a guardian ad litem in writing or on the record, Proposed Rule 5.01, and by expressly prohibiting the child's attorney from serving as a guardian ad litem, Proposed Rule 5.02, the rule effectively mandates the appointment of a non-lawyer guardian in virtually every instance of parental absence or conflict.

Minnesota Statute 260.155 Subd. 4 (a) and (b) provides an adequate and workable protection of the interests of juveniles. It allows the court to appoint a guardian ad litem under all the circumstances described in the Proposed Rule 5.01, as well as whenever the court, in its own sound discretion "feels that such an appointment is desirable." Minn. Stat. § 260.155 Subd. 4 (a) Under Minnesota Statute § 260.155 Subd. 4 (b), the court may waive the appointment of a separate guardian ad litem only when the child is represented by counsel and the court is satisfied that the interests of the child will be adequately protected.

The Proposed Rule 5.02 repudiates the legislative policies of Minnesota Statute § 260.155 Subd. 4 (b) and prohibits the child's attorney from ever functioning as the child's guardian ad litem. The prohibition of the child's attorney serving as guardian ad litem is also inconsistent with Minnesota Rules of Juvenile Court 9-4 which provide.

> Except in causes where there are special reasons why a particular layman would be the most appropriate

> guardian ad litem for the child, the court shall appoint an attorney as guardian ad litem. A guardian ad litem who is an attorney shall act as his own counsel and as counsel for the child, unless there are special reasons in a particular cause why the guardian or the child or both should have counsel in addition to the guardian.

Under current practice, the court must find that a child is represented by counsel and that the interests of the minor are adequately protected. Minn. Stat. § 260.155 Subd. 4 (b)

There are several difficulties posed by the Proposed Rule 5.02 which creates a greater duty to appoint a guardian ad litem than does the current law, and which expressly bars the child's attorney from functioning in that capacity under any circumstances. In the first instance, there is no evidence that there is any deficiency in the current practice. So far as can be determined, juvenile courts have not abused their discretion by failing to appoint guardians ad litem where such an appointment is appropriate. There is no evidence that juveniles' rights or interests have been inadequately protected when the court declines to appoint a guardian because a child is already represented by counsel. Under theproposed rule, since the guardian ad litem can not be the child's attorney and in many cases many not be an attorney at all, there will be instances under this rule where a second attorney will have to be appointed for the guardian ad litem. Proposed Rule 4.02. Since the child's attorney is the lawyer for the child and not for the guardian, if the child's position and that of the guardian differ, appointing a separate lawyer will for the guardian, will entail unnecessary additional costs and burdens. Moreover, the Proposed Rules give the guardian ad litem substantial powers to override or veto decisions made by a youth in consultation with an attorney,

for example, the decision to waive rights, Proposed Rule 6.02, Proposed Rule 15.03 or admit or deny the allegations of petitions, Proposed Rule 21.03. Proposed Rule 5 provides absolutely no standards, criteria, or guidelines other than the meaningless "protect the interests of the child" for the guardian in exercising this awesome authority or in resolving conflicts with a youth.

The lack of guidelines or standards for the guardian in the proposed rule raise the more basic question as to the duties and functions of the guardian ad litem, and the ways in which they may differ from those of the child's counsel. Resort to a guardian ad litem is typically sought to protect the interests of incompetents, infants, or others deemed incapable of protecting themselves before the law. See generally, Solender, "The Guardian Ad Litem: A Valuable Representative or an Illusory Safeguard," 7 Texas Tech L. Rev. 619 (1976); Note, "Protecting the Interests of Children in Custody Proceedings: A Perspective on Twenty Years of Theory and Practice in the Appointments of Guardians Ad Litem," 12 Creighton Law Review 234 (1978). The assumption that minors involved in the Minnesota juvenile justice process are so incompetent as to require the subordination of their own autonomy to that of a guardian ad litem who has the unreviewable authority to override their own choices is belied by many statutes and case law. The Minnesota Legislature has determined that minors are capable of waiving rights. Minnesota Statute § 260.155 Subd. 8 provides that:

> Waiver of any right which a child has under this chapter must be an express waiver intelligently made by the child after the child has been fully and effectively informed of the right being waived.

> If a child is under 12 years of age, the child's parent, guardian or custodian shall give any waiver or offer any objection contemplated by this chapter.

Many other statutory provisions allow minors to exercise a number of aspects of adult-like autonomy. See e.g., Minnesota Statute 144.342 et seq. (right to consent to medical treatment); Minnesota Statute 171.04 et seq. (driver's license at 16, with special provisions for even younger driving). See also A.B.A. Juvenile Justice Standard, Rights of Minors. Similarly, the Minnesota Supreme Court has ruled on many occasions that minors are capable of making informed, intelligent decisions. See e.g., State v. Hogan, 212 N.W.2d 664 (1973); In re Welfare of M.A., 310 N.W.2d 699 (1981). The proposed Rules which prohibit a minor of any age from ever waiving the right to remain silent, Proposed Rule 6.02, the right to counsel, Proposed Rule 15.02, or any other constitutional right, Proposed Rule 15.03, or enter an admission to a petition, Proposed Rule 21.03, without the express and written concurrence of a guardian ad litem represents repudiation of these legislative and judicial judgments.

The assumption that minors, even in consultation with counsel, are incapable of making competent decisions also implies that there is some standard by which a non-lawyer guardian ad litem can better determine what the child's "best interests" are. Proposed Rule 5 is absolutely silent on the question of what the guardian ad litem's duties are or the standards by which it is to fulfill these obligations. The mandatory appointment of a guardian raises the inevitable prospect that in some cases the interests of the juvenile and the guardian will diverge. In those circumstances, either the guardian's

position must prevail because the juvenile is too incompetent to make self-enlightened decisions, or separate counsel must be appointed to represent the guardian ad litem in addition to the lawyer for the child. Proposed Rule 5 creates more administrative, practical, and policy problems than it solves and should be amended to conform with the requirements of Minnesota Statute § 260.155 Subd. 4 (a) and (b).

Proposed Rule 6. Right to Remain Silent

Proposed Rule 15. Waiver of Counsel and Other Constitutional Rights

Proposed Rule 6 substantially alters the current law regarding the interrogation of juveniles and waivers of rights. It expands the circumstances under which a Miranda warning is required to include any instance in which a child is "physically restrained". Proposed Rule 6.01. It enlarges the class of persons required to give Miranda warnings from police officers to also encompass probation and parole officers and "school staff personnel." Proposed Rule 6.01. It requires that all Miranda warnings be given in the presence of the child's parents. Proposed Rule 6.01. It requires that the parents as well as the youth being interrogated sign any waiver. Proposed Rule 6.02. And it requires, as an absolute prerequisite to the admissibility of a confession, that either the child's parents are present, Proposed Rule 6.03, or if they cannot be found, "a responsible adult interested in the welfare of the child" is present. Proposed Rule 6.04. Similarly, Proposed Rule 15 requires the presence of parents or guardians, and their express written concurrence in any waiver of any other constitutional right in order for the child's waiver to be valid.

When the United States Supreme Court decided in In re Gault, 387 U.S. 1 (1967), that the privilege against self-incrimination was applicable to juvenile court proceedings, the procedural safeguards developed in Miranda v. Arizona, 384 U.S. 436 (1966) also became applicable. Prior to and after Gault and Miranda, the validity of a minor's waiver of Fifth Amendment rights, the voluntariness of any confession obtained, and the waiver

of any other constitutional right were determined by assessing whether there was a "knowing, intelligent, and voluntary waiver" by use of a "totality of the circumstances" test. In assessing the "totality of the circumstances" surrounding any waiver of rights or confession, the United States Supreme Court has been particularly solicitous of the effects that a youth's age and experience may have. See e.g., Haley v. Ohio, 332 U.S. 596 (1948); Gallegos v. Colorado, 370 U.S. 49 (1962); Fare v. Michael C., 442 U.S. 707 (1979). In Fare v. Michael C., 442 U.S. (1979), the United States Supreme Court reaffirmed the applicability of the "totality of the circumstances" test to the admissibility of juvenile confessions and other waivers of rights.

The Minnesota Supreme Court has also used the "totality of the circumstances" test to determine the validity of a juvenile's waiver of constitutional rights, Miranda rights, and the voluntariness of any statement. State v. Hogan, 212 N.W.664 (Minn. 1973); State v. Nunn, 297 N.W.752 (1980); In re Welfare of M.A., 310 N.W.2d 669 (1981). In State v. Nunn, 297 N.W.2d (1980), the Minnesota Supreme Court specifically rejected the argument that no confession by a juvenile should be admitted unless a parent or guardian was present at the time that the juvenile waived his rights. The Minnesota Supreme Court quoted from the United States Supreme Court's decision in Fare v. Michael C., 442 U.S. 707 (1979) in reaffirming its adherence to the totality of the circumstances approach in determining the voluntariness of a waiver of Miranda rights by a juvenile:

> This totality of the circumstances approach is adequate to determine whether there has been a waiver even where interrogation of juveniles is

> involved. We discern no persuasive reasons why any other approach is required where the question is whether a juvenile has waived his rights as opposed to whether an adult has done so. The totality approach permits--indeed, it mandates--inquiry into all the circum- stances surrounding the interrogation. This includes evaluation of the juvenile's age, experience, educa- tion, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights...
>
> Courts repeatedly must deal with these issues of waiver with regard to a broad variety of constitutional rights. There is no reason to assume that such courts--especially juvenile courts, with their special expertise in this area will be unable to apply the totality of the circumstances analysis so as to take into account those special concerns that are present when young persons, often with limited experience in education and with immature judgment are involved.

Thus, on repeated occasions the Minnesota Supreme Court has adhered to the totality of the circumstances test for waivers of rights and the voluntariness of confessions. It has clearly rejected the thrust of Proposed Rule 6.03 that the presence of parents or guardians at a youth's interrogation are an absolute prerequisite to admissibility. It has rejected the fallacious and paternalistic notion that somehow a youth's rights are "really" their parents' or guardians' rights. Constitutional rights are personal rights. In so doing, it has affirmed the principle that juveniles are legally capable of waiving the fifth amendment right against self-incrimination, the sixth amendment right to counsel, or any other constitutional right when the circumstances clearly indicate that it was done knowingly, intelligently, and voluntarily. This is consistent with the legislature's judgment that youths of twelve or older are capable of making informed decisions regarding waivers without an absolute parental right to veto that decision. Minnesota Statute 260.155 Subd. 8

Despite the legislative and judicial determinations that the totality of the circumstances test is an adequate tool for assessing a youth's understanding, there is substantial reason for questioning whether a typical juvenile's waiver is in fact "knowing, intelligent, and voluntary." There has been considerable empirical research evaluating whether juveniles fully understand thir Miranda rights and truly waive them knowingly. See e.g., T. Grisso, Juveniles' Waiver of Rights: Legal and Psychological Competence (1981); Grisso, "Juveniles' Capacities to Waive Miranda Rights: An Empirical Analysis," 68 California Law Review 1134 (1980); Ferguson and Douglas, "A Study of Juvenile Waiver," 7 San Diego Law Review 39 (1970); Levy and Skacevic, "What Standard Should be Used to Determine a Valid Juvenile Waiver?", 6 Pepperdine Law Review 767 (1979); S. Brewer, The Youngest Minority: Are they Competent to Waive their Constitutional Rights? (1978); Note, "Juvenile Confessions: Whether State Procedures Ensure Constitutionally Permissible Confessions," 67 Journal of Criminal Law and Criminology 195 (1976).

The empirical studies of Miranda waivers by juveniles provide strong support for the proposition that most minors lack the understanding to properly waive their constitutional rights. Fergusson and Douglas, "A Study of Juvenile Waiver," supra, found that over 90 percent of the juveniles interrogated waived their rights, that an equal number did not actually understand the rights they waived, and that even simplified language in the Miranda warnings failed to cure these defects. Similarly, Grisso, "Juveniles' Capacities to Waive Miranda Rights", supra, also found that the problems of understanding and waiving rights

were particularly acute for juveniles. He concluded that "As a class, juveniles younger than fifteen years of age failed to meet both the absolute and relative (adult norm) standards for comprehension...The vast majority of these juveniles misunderstood at least one of the four standard Miranda statements, and compared with adults, demonstrated significantly poorer comprehension of the nature and significance of the Miranda Rights." 68 California Law Review at 1160 (1980).

The clear thrust of this research is that juveniles are not as competent to waive their rights as adults. However, the policy alternatives that would correct this fundamental difficulty raise other troublesome issues. One alternative is to continue to use a totality of the circumstances test, raise judicial awareness to the particular vulnerabilities of youth, and hope that juvenile court judges reviewing waivers under the totality of the circumstances will evaluate them conscientiously and be able to discern between competent and incompetent waivers and confessions by juveniles. There is reason for concern with this solution, however, since the ability of courts to evaluate confessions is confounded by the multitude of factors implicated by the "totality" approach, the lack of guidelines as to how various factors should be weighed, and the myriad combinations of factual situations that make virtually every case unique with the result being virtually unlimited and unreviewable judical discretion.

As an alternative to the broad discretion afforded by the totality test, several jurisdictions have attempted to develop

some concrete guidelines or per se rules requiring the presence of an "interested" adult, Commonwealth v. Roane, 329 A.2d 286 (1974), a parent, People v. Burton, 491 P.2d 793 (1971), Lewis v. State, 288 N.E.2d 138 (1972), or an attorney, Texas Fam. Code. Ann. tit. 3, § 41.09 (Vernon Suppl. 1980), at the interrogation of a juvenile as a prerequisite to the admissibility of a confession or the validity of a waiver. The Proposed Rule 6.03 follows this line and creates a per se rule that parents or guardians must be present at any interrogation and agree to the waiver as an absolute prerequisite to the admissibility of any statements obtained.

The arguments that courts and commentators have advanced for requiring parents or other interested adults to be present as a per se requirement for the interrogation of their children or other waivers seem initially plausible. The Louisiana Supreme Court in In re Dino, 359 So.2d 586 (1978), noted several positive effects of a rule requiring parental presence at their child's interrogation, including mitigation of the dangers of untrustworthiness, reduction in coercion, an independent witness who can testify in court as to any coercion that was present, and relieving police of the burden of having to make subjective judgments on a case-by-case basis as to the competency of the youth they were questioning. Proposed Rule 6 obviously proceeds from the assumption that juveniles are neither mature enough to understand their rights nor competent enough to waive them without first consulting with their parents. Thus, parental presence is required either to reduce the juvenile's sense of pressure or fear, or to provide advice about technical or legal

matters which the juvenile may not be able to comprehend. The rationale of Proposed Rule 6 assumes that there will exist an identity of interests between parents and child so that their presence will mitigate the pressures on the child. It also assumes that the parents will have sufficient understanding of their child's rights to function in an effective advisory capacity.

There are a number of problems, however, with requiring parental presence and a knowing, intelligent, and voluntary waiver by them as well as their child. The Proposed Rule will introduce an additional tier of litigable issues when courts are required to determine whether the parent was informed of the juvenile's rights, whether the parent understood those rights, whether the parent and child had an adequate opportunity to confer, and the like. It will divert attention from the validity of the confession itself to a mechanical inquiry as to the parents' presence and understanding.

There is also reason to question whether parents are even capable of or inclined to provide the protection that such a per se rule assumes. Requiring parental presence at a waiver may aggravate rather than mitigate the coercive pressures to which the youth is subjected. The parents' potentially conflicting interest, emotional reactions to their child's arrest, or their own intellectual or social disabilities may detract from rather than enhance their ability to provide counsel and support to the child. Research on the extent to which adults are capable of understanding and intelligently waiving Miranda rights raises the question whether even well intentioned parents will provide much assistance. Their lack of understanding,

coupled with a lack of formal legal training, may actually increase the coercive pressures on a youth. One critic of the parental presence requirement questioned

> if the presence of this "friendly adult" will create the intended results. Parents, possibly ashamed and/or angered that their child is in custody, may further coerce the child into owning up to the alleged offense, instead of affording the youth shelter. Moreover, a parent may be no more knowledgeable than the juvenile about constitutional rights and the consequences of a confession.

Note, "Juvenile Confessions: Whether State Procedures Ensure Constitutionally Permissible Confessions," 67 J. Criminal Law & Criminology at 205 (1976). Indeed, the case law is replete with instances of parents coercing their children into confessing to the police. See e.g., United States v. Fowler, 476 F.2d 1091 (1973). Some courts have held that when a child responds to a question from his parent in the presence of police officers that he was not subjected to custodial interrogation and that therefore Miranda did not apply at all. See e.g., In re C.P.D., 367 A.2d 133 (1976). When a mother repeatedly urged her 15 year-old boy "to tell the truth or she would clobber him," the court concluded that "The motherly concern for the basic precepts of morality are to be commended. We find no element of a threat or coercion on the part of the Mother." Anglin v. State, 259 So. 2d 752 (1972).

Empirical evaluations of the parental role at interrogations also suggest that their presence may be dysfunctional. Grisso, Juveniles' Waiver of Rights 187 (1981) found that "Most parents gave no direct advice to their children regarding the waiver decision, and those that did offer advice almost always urged their children to waive rights. In fact, less than 10% of the parents in this study would meet the aforementioned criterion

of adequate protection." This empirical observation was bolstered by questionnaire surveys that found that "A substantial majority of the parents felt that juveniles should never be allowed to withhold from police any information about their involvement in a crime." Id. at 200. Thus parents appear to be predisposed to coercing their child into waive the right to silence.

If the Minnesota Supreme Court is committed to the preservation of juveniles' rights and guarding against incompetent waivers that may also be undetectable under a totality of the circumstances rubric, it should reject the Proposed Rule 6 and 15 which will not afford adequate safeguards and indeed may aggravate the problems. Instead, it should require consultation with counsel and the presence of competent attorney at every interrogation of a juvenile and prior to any waiver of rights. "A requirement to automatically provide legal counsel to juveniles prior to the waiver decision would probably be one of the most direct and potentially effective remedies to the problem of juveniles' lack of competence to waive rights knowingly, intelligently, and voluntarily." Grisso, Juveniles' Waiver of Rights 200 (1981). Indeed, this position has been proposed by the American Bar Association's Juvenile Justice Standards Project, Standards Relating to Pretrial Court Proceedings § 6.1 et seq. (1980) Connecticut and Texas require that an attorney for the juvenile be present in order for a juvenile's confession to be valid. This is the only satisfactory per se alternative to the discretionary, totality of the circumstances approach.

All of the concerns noted here regarding the mechanisms for waiving a youths' right to remain silent are also applicable with respect to Proposed Rule 15 on the waiver of counsel and

other constitutional rights. Accordingly, whatever modifications are made in Proposed Rule 6 should also be incorporated in Proposed Rule 15 as well.

In addition to the foregoing, Proposed Rule 6 also expands the scope of Miranda rights in an unwarranted and unjustifiable manner. The Miranda warning/waiver requirements were designed to cope with the uniquely stressful circumstances posed by the "inherent coercion of custodial interrogation". Proposed Rule 6 expands this scope far beyond its original rationale and makes Miranda applicable whenever a minor is "physically restrained" and questioned by "a peace officer, probation officer, parole officer, or school staff personnel."

The failure to define the meaning of the term "Physically restrained" substantially broadens the potential applicability of the rule, extending it from traditional custodial arrest to also include field interrogation and "stop and frisk" situations short of custody. In United States v. Mendenhall, 446 U.S. 544 (1980), the United States Supreme Court defined the nature of a "stop" which falls short of a custodial arrest which requires arrest probable cause: "A person is 'seized' only when by means of physical force or a show of authority, his freedom of movement is restrained." The Court's definition of a "stop" would clearly satisfy the Proposed Rule's requirement of "physical restraint". Yet, there is nothing in the policies underlying Miranda or in the nature of field interrogation that would justify expanding the scope of Miranda this radically.

The Proposed Rule also broadens the applicability of Miranda by including probation officer, parole officer, or school staff

personnel in addition to peace officers. Although the Minnesota Supreme Court in State v. Murphy, ___ N.W.2d ___ (1982) recently made Miranda safeguards applicable to interrogations by probation or parole officers, there is absolutely no justification for extending its scope to school staff personnel as well. None of the conern of "the third degree in the back room" are even remotely applicable where a school counselor interviews a youth who has been called from class. Moreover, the failure to define "school staff personnel" would clearly require that a school janitor blocking a youth in the washroom to ask him about vandalism would have to advise the juvenile of his Miranda rights and obtain his parents' presence before interrogating him. There is no justification in law or in the policies underlying the Fifth Amendment for such a result.

Rule 18. Detention

Proposed Rule 18.01 Subd. 2 (A) (i) which authorizes initial detention based on the predictive judgment that if the child were released "others would be endangered", Proposed Rule 18.05 Subd. 5 (b) (i) which authorizes continued detention if the court finds probable cause that "others would be endangered if released" and Proposed Rule 18.08 Subd. 2 (D) (i) which authorizes continued detention if "others would be endangered if released" are unconstitutional on their face as a denial of equal protection and due process. See United States ex rel Martin v. Strasburg, 513 F. Supp. 691 (1981) These are blatant and unconstitutional provisions for preventive detention based on nothing more than a showing of probable cause.

In United States ex rel Martin v. Strasburg, 513 F. Supp. a New York statutory detention mechanism very similar to that for Minnesota in Proposed Rule 18 was challenged. Under New York Family Court Act § 739 (McKinney) a juvenile court judge "in its discretion" was authorized to detain a youth if "(a)(ii) there is a serious risk that he may before the return date do an act which if committed by an adult would constitute a crime." Unquestionably, the danger of future criminality is the criterion envisioned in Proposed Rule 18.01 Subd. 2 "Others would be endangered" and in Proposed Rules 18.05 Subd. 5 (a)(i) and 18.08 Subd. 2 (D) (i) "Others would be endangered if released."

The Court in Martin v. Strasburg reviewed the process by which detention decisions were made, and the procedures in New York were virtually identical to those envisioned under Proposed Rule 18. Id. at 701-2. The petitioners in the case were members of a class of detained youths who argued that

> 'the subjective prediction or prognosis of the imminence of future misconduct which § 739 (a)(ii)

> authorizes as the basis for the pretrial detention of juveniles is a vague, arbitrary and capricious standard and that no rationally based prediction or reasoned determination is possible under the statutory scheme. They insist that the statute is overbroad and violates equal protection constraints in authorizing pretrial detention of juveniles since they are thereby treated differently from adults, and there is neither a rational basis pertinent to the differentiation between the two groups, nor any compelling state justification to warrant imposition of the restrictions imposed on juveniles under the statutory scheme." Id. at 704.

The Proposed Rule 18 authorizes the preventive detention of juveniles under circumstances that would be impermissible for adults, in violation of the guarantees of equal protection. Although legislatures or courts may make laws or rules which treat different classes unequally on the basis of age, See e.g., Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976) all of the legitimate state interest in treating youths differently from adults are adequately subsumed under the other detention provisions in this rule. Clearly, there is a compelling state interests in protecting children from harmful environments and abusive home situations for which there is no corresponding state interest vis a vis adults. However, this legitimate interest is clearly served by the provisions of Proposed Rule 18.01 Subd. 2 (A)(iv) and 18.05 Subd. 5 (b)(iv). There is no compelling state interests that justifies treating juveniles differently and more punitively than adults on the grounds of possible future criminality.

More fundamentally, however, the preventive detention provisions of Proposed Rule 18 impose potentially prolonged periods of pre-trial detention on the basis of a prediction about future danger to others for which there is absolutely no rational basis.

See Feld, "Reference of Juvenile Offenders for Adult Prosecution: The Legislative Alternative to Asking Unanswerable Questions," 62 Minnesota Law Review 515, 540-556 (1978). Youths in Minnesota, like adults, have a fundamental liberty interest which can only be abridged in accordance with due process of law. Ingraham v. Wright, 430 U.S. 651 (1977). The Proposed Rule 18 violates due process because it authorizes the pretrial detention of a juvenile on the basis of a prediction of future criminal conduct which cannot be made on any reasonable basis. The grant of such awesome discretion when there is no rational basis for its exercise is the essence of a license to act arbitrarily and capriciously. Moreover, pretrial detention prior to any determination of guilt of a substantive offense constitutes the imposition of punishment that is constitutionally impermissible under a due process analysis.

The Proposed Rule 18 allows a judge to preventively detain a youth on the basis of a prediction. There are absolutely no criteria, guidelines, or standards to structure the exercise of discretion in making this determination. Presumably, each juvenile court judge in the state can apply this same standard on whatever individual idiosyncratic basis they choose with absolutely no basis for effective appellate supervision. The type of information available to the court at the time of its initial decision to detain or to continue to detain will typically be limited to allegations regarding the offense. Unless a youth has had prior contacts with the court and an on-going social services file, there will be very little additional psychological evaluations, or other information that would even contribute

to the judge's decision. The inevitable result of trying to make such a decision without adequate information will be the development of ad hoc or variable detention criteria for such reasons as protecting the community, giving vent to a punitive impulse, or responding to the seriousness of the offense alleged. None of these are legitimate reasons for the preventive detention of adults, and they should not be in the case of juveniles.

The fact is that any effort to predict future dangerousness based on the present state of the art of prognostication is necessarily doomed to failure. As the Court found in Martin v. Strasburg, 513 F. Supp. at 708 (1981) "no method had yet been devised which could predict with any acceptable degree of accuracy that a juvenile shall commit a crime, particularly the commission of an offense in a short space of time" between pretrial custody and an adjudicatory hearing.

I am very flattered that the court in Martinv. Strasburg drew heavily on my own research on the issues of predicting dangerousness. Feld, "Reference of Juvenile Offenders for Adult Prosecution: The Legislative Alternative to Asking Unanswerable Questions," 62 Minnesota Law Review 515, 540 (1978). Indeed, the Minnesota Supreme Court in In re Dahl, 278 N.W.2d 316, 318 (1979) also relied on that article for the same proposition --that the ability to predict dangerousness is beyond the present power of clinicians, juvenile court judges, or even crystal ball gazers.

> The ability to predict which juveniles will engage in violent crime, either as adolescents or as adults, is very poor. The conclusion...that there has been no successful attempt to identify, within...offender groups, a subclass whose members have a greater than even chance of engaging again in an assaultive act" is as true

> for juveniles as it is for adults. It holds regardless of how well trained the person making the prediction is--or how well programmed the computer--and how much information on the individual is provided. More money or more resources will not help. Our crystal balls are simply very murky, and no one knows how they ban be polished. Monohan, The Prediction of Violent Behavior in Juveniles 10-11 in National Symposium on the Serious Juvenile Offender.

The Minnesota Supreme Court in In re Dahl, quoting Professor Feld at 278 N.W.2d 316, 319, also adverted to the fundamental problem on even trying to let judges make predictive judgments for preventive detention purposes:

> The problem of predicting dangerousness is not merely that it cannot be done with an acceptable degree of accuracy but also that there is a very substantial tendency to overpredict and to identify as potentially dangerous persons who, if subsequently released, would engage in no further violent or even criminal behavior. Thus, the conclusion to emerge most strikingly from these studies is the great degree to which violence is overpredicted...Of those predicted to be dangerous, between 65 percent and 99 percent are false positives--that is, people who will not, in fact, commit a dangerous act...Violence is overpredicted whether simple behavioral indicators are used or sophisticated multivariate analyses are employed and whether psychological tests are administered or thorough psychiatric examinations are performed.
>
> This tendency to overpredict dangerousness raises profound moral questions with which society must deal in its treatment of both juvenile and adult offenders.

To what extent are we willing to permit standardless judicial speculation about the possibility of subsequent criminal activity on the part of youths when the inevitable result of granting judges such authority will be the over-prediction and incarceration of many youths simply because they run afoul of an insubstantial judicial hunch. That is the essence of what Proposed Rule 18 provides. As the court in Martin v. Strasburg

concluded, 513 F. Supp. at 712 (1981) juveniles who are subjected to detention "have their freedom curtailed by judgments that are untrustworthy and uninformed and without the requisite rationality which due process mandates."

Proposed Rule 19. Petition

Proposed Rule 19.03 pertaining to the contents of the delinquency petition denies juveniles who are not being held in detention the right to constitutionally adequate notice by failing to provide for a statement of probable cause. See Gerstein v. Pugh, 420 U.S. 103 (1975); State v. Florence 239 N.W.2d 892 (1976) Proposed Rule 19.03 (a) requires that a delinquency petition contain only "a statement that the child is delinquent and a simple, concise and direct statement of the alleged delinquent act..." In authorizing a delinquency petition which contains only conclusory factual allegations, the drafters apparently rely on In re Hitzemann, 161 N.W.2d 542 (1968). Hitzemann was decided shortly after the Supreme Court's decision in Gault which began the process of the "constitutional domestication of the juvenile court." While it was decided at a time when the "civil" versus "criminal" distinctions in juvenile court still may have had some meaning, the subsequent criminalization of the juvenile court has eroded much of the rational of Hitzemann. See Feld, "Juvenile Court Legislative Reform and the Serious Young Offender: Dismantling the 'Rehabilitative Ideal'", 65 Minnesota Law Review 167, 203-5 (1981).

The Minnesota Supreme Court should adopt the probable cause standards of the Minnesota Rules of Criminal Procedure 2.01 and require the petition to allege "the facts establishing probable cause to believe that an offense has been committed and that the defendant committed it..." The requirement of a probable

cause statement would not require an adversarial probable cause determination. As the Minnesota Supreme Court noted in State v. Florence, 239 N.W.2d 892 (1976), where it upheld ex parte judicial determinations of probable cause:

> a carefully drawn and sufficiently detailed complaint made by an investigating officer and incorporating reliable hearsay could in some limited situations be adequate support for a finding of probable cause at least where the essential truth of the facts averred in the complaint is not contested. In the more usual situation, the complaint will and should be buttressed by the police report, including verified statements of witnesses whose observations form the basis of the complaint and, in addition, the results of disclosure and discovery procedures required by the rules. Id. at 902 (1976)

The same standard should apply for juveniles. The Proposed Rule 19.04 Subd. 1 provides that "a court may order a showing of probable cause (i) on its own motion, or (ii) on the motion of the child which states sufficient reasons that a probable cause showing is necessary..." As a result of the discovery provisions authorized in Proposed Rule 24.02 Subd. 2 (A), a petition alleging probable cause for non-detained youths will be required as a constitutional matter in every instance in which a youth is subjected to the various identification procedures enumerated in Proposed Rule 24.02 Subd. 2 (A) (a) - (h). See e.g., Davis v. Mississippi, 394 U.S. 791 (1969). Thus, juvenile courts will be required to order probable cause statements in a significant number of instances on its own motion.

Although Proposed Rule 19.04 Subd. 1 (c)(ii) purports to give the juvenile the opportunity to request a probable cause showing, it does so only when the child states "sufficient reasons". However, the rule is absolutely silent as to what would constitute a sufficient reason. Is it not a sufficient

reason that the state intends to subject the youth to the burden, expense, and anxiety of preparing to defend in an adversarial context.

It may be argued that requiring a county attorney to draft a probable cause statement for every petition may impose an onerous burden on the prosecutor's office. However, it is an even more onerous burden on a respondent to have to participate in the entire juvenile justice process all the way through a trial without the State ever being required to justify in writing the underlying factual basis for that enormous imposition. Many petitions containing the current conclusory allegations are currently dismissed prior to trial when it is finally discovered that witnesses are unavailable orinvestigation reveals that the facts as alleged do not correspond to the actual event. Requiring the county attorney to draft a full probable cause statement in every petition will have a salutory effect on the administration of juvenile justice by requiring much more conscientious preliminary screening of cases with the net benefit that many ultimately insubstantial cases will not be filed.

Rule 24. Discovery.

In general, Proposed Rule 24 on Discovery conforms to the provisions of Minnesota Rule of Criminal Procedure 9. However, there is one very critical instance in which Proposed Rule 24 broadens the scope of discovery and departs substantially from both constitutional requirements and the adult rules. Proposed Rule 24.01 Subd. 1 (F) governing the prosecutor's duty to disclose exculpatory information is significantly different from the Prosecutor's obligations under Minnesota Rules of Criminal Procedure 9.01 Subd. 1 (6). The Rules of Criminal Procedure require that:

> The prosecuting attorney shall disclose to defense counsel any material or information within his possession and control that tends to negate or reduce the guilt of the accused as to the offense charged.

The comparable provision under the Proposed Rule 24.01 Subd. 1 (F) requires that:

> The county attorney shall disclose to the child's counsel any material or information within the possession and control of the county attorney that tends to negate or reduce the possibility of the allegations in the petition being proved or of an adjudication of delinquency of the child.

Disclosure of information dealing with the provability of a case rather than the degree of guilt of a defendant marks a major departure from traditional criminal discovery.

The prosecutor's duty to disclose exculpatory information is governed by Brady v. Maryland, 373 U.S. 83 (1963). The Brady obligation extends to all "evidence favorable to the accused" and which is either material to the degree of guilt or punishment. The Comment to Minnesota Rule of Criminal Procedure 9.01

Subd. 1 (6) explicitly adopts the "exculpatory" material requirements of Brady. Proposed Rule 24.01 Subd. 1 (F) significantly expands the scope of the Brady obligation, however, by requiring disclosure of any information which although not bearing on the degree of guilt or punishment, would effect the prosecutor's ability to prove the allegations in the petition. A simple example will illustrate the problem. Shortly before trial, a prosecutor discovers that subpoenas for a critical witness have not been served because the witness is no longer within the state. Under the adult discovery provisions, the prosecutor could offer the defendant a very attractive plea agreement, and unless the defense counsel affirmatively inquired as to the availability of witnesses, the prosecutor would be under no duty to disclose his inability to prove a case. Nor is there any Brady obligation in this situation for the prosecutor to affirmatively bring his problems of proof to the defendant's attention. Under Proposed Rule 24.01 Subd. 1 (F), deficiencies in the prosecutor's case having absolutely no relationship to the degree of guilt of the juvenile and bearing solely on the prosecutor's ability to prove a case through a contested trial must also be disclosed. Such an expansion of the duty to disclose would undermine the adversarial process and detract from the quality of the defense by reducing the defendant's incentive to conduct an independent investigation.

The Proposed Rule should be amended to make it conform to the language of the Rules of Criminal Procedure.

Rule 27. Trials

Proposed Rule 27.03 Subd. 2 (A) pertaining to Trial Rights unconstitutionally denies juveniles the right to a jury trial under the Federal and Minnesota Constitutions. Minnesota Statute 260.155 Subd. 1 which provides, inter alia, that "hearings on any matter shall be without a jury..." similarly, unconstitutionally denies juveniles a right to a jury trial. The Minnesota Supreme Court in promulgating new rules of procedures for the juvenile court should take this opportunity to guarantee that juveniles charged with and adjudicated for criminal activity receive the full procedural protections to which they are entitled.

Obviously, the position being advocated here is a controversial one. However, elementary justice and fundamental fairness requires that the Minnesota Supreme Court consider the extent to which the underlying rationales that were offered to deny juveniles the right to a jury trial are still applicable. See, Feld, "Juvenile Court Legislative Reform and the Serious Young Offender: Dismantling the 'Rehabilitative Ideal'", 65 Minnesota Law Review 167 (1981).

When the United States Supreme Court decided McKeiver v. Pennsylvania, 403 U.S. 528 (1970), it assumed that the therapeutic and rehabilitative rhetoric of the juvenile court corresponded with the reality of juvenile justice. It expressed concern that imposing jury trials in juvenile court as a constitutional requirement would detract from the flexibility and informality of state juvenile court proceedings. The Court cautioned that "there is a possibility, at least, that the jury trial, if required as a matter of constitutional precept, will remake the

juvenile proceedings into a fully adversary process and will put an effective end to what has been the idealistic prospect of an intimate, informal protective proceeding." Id. at 545. In McKeiver, the Court held that the only requirement for "fundamental fairness" in juvenile court proceedings is "accurate fact-finding" and reasoned that this requirement could be satisfied as well by a judge as by a jury. Id. at 543. But in suggesting that nothing more than accurate fact-finding was required to satisfy the requirements of due process for juveniles, the Court departed significantly from its own prior analyses of the dual functions of procedures in juvenile court adjudications, for all of its earlier decisions actually were premised on two rationales--accurate fact-finding and protection against governmental oppression. This dual function of procedural due process was clearly recognized, for example, in In re Gault, 387 U.S. 1 (1967), when the Court held, inter alia, that juveniles must be accorded the fifth amendment privilege against self-incrimination in delinquency adjudications. See id. at 55. If the Court in Gault had been concerned solely with the reliability of juvenile confessions and the accuracy of fact-finding, safeguards other than the fifth amendment privilege--for example, a requirement that all confessions be shown to have been made voluntarily--would have sufficed. See id. at 75-78 (Harlan J. concurring and dissenting). The Court, however, recognized that fifth amendment safeguards were not simply to ensure accurate fact-finding or reliable confessions, but to serve as a fundamental bulwark of the adversary system and a mechanism for maintaining a balance between the individual and the state.

In its preoccupation with the impact of jury trials on the informality and flexibility of juvenile court proceedings, the Court in McKeiver failed to acknowledge the protective functions that juries serve beyond the accuracy of their factual findings. By contrast, in Duncan v. Louisiana, 391 U.S. 145 (1968), the Court, in holding that jury trials were constitutionally required in state criminal proceedings, had clearly acknowledged that the rationale for juries involved more than accurate fact-finding, which concededly could be accomplished without providing a jury. See id. at 149 n. 14. The Court concluded that in an Anglo-American system of criminal jurisprudence, factual accuracy was not determinative of fundamental fairness. After reviewing the history of the right to jury trial, the Court required states to provide juries "in order to prevent oppression by the Government...Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge." Id. at 155-56. It is instructive to compare the U.S. Supreme Court's reasoning in McKeiver with that of the Alaska Supreme Court in R.L.R. v. State, 487 P.2d 27 (Alaska, 1971) which held that the Alaska state constitution required jury trials in juvenile court because of the protective buffer they provide between the individual and the state. Indeed, Alaska is one of a number of states that either by judicial decision or state statute have rejected the reasoning of the McKeiver Court. Colorado by legislation has given juveniles jury trials since 1903, Col. Rev. Stat. 19-1-106. So do Michigan, Massachusetts, Montana, New Mexico, Oklahoma, Texas, West Virginia, and Wyoming.

Unlike the McKeiver opinion which assumed away most of the critical issues in the case, it is important to examine the underlying assumptions that either accurate factfinding or adequate procedural safeguards can be provided in delinquency proceedings alleging the commission of a crime without the possibility of a jury trial.

Accurate Fact Finding

The United States Supreme Court in In re Winship, 397 U.S. 358 (1970), held that the same standard of proof is required to convict a juvenile of an offense that would be a crime if committed by an adult as to convict an adult similarly charged. The Court's rationale was that the seriousness of the proceedings and the potential consequences for juvenile or adult defendants require the highest standard of proof in both contexts in order to avoid the dangers of convicting innocent people. The Court reasoned that the reasonable doubt standard plays a fundamental role in American criminal procedure and juvenile justice:

> It is the prime instrument for reducing the risk of convictions resting on factual error. The standard provides concrete substance for the presumption of innocence--that bedrock 'axiomatic and elementary principle whose enforcement lies at the foundation of the administration of our criminal law'...
>
> The requirement of proof beyond a reasonable doubt has this vital role in our criminal procedure for cogent reasons. The accused during a criminal prosecution has at stake interests of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction...
>
> Moreover, use of the reasonably doubt standard is indispensable to command the respect and confidence of the community in application

> of the criminal law. It is critical that the moral force of the criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are condemned. Id. at 363-64.

The Court held that all of those same considerations were equally applicable in the context of juvenile delinquency proceedings where the underlying conduct alleged constituted a crime if committed by an adult. Indeed, in a number of instances, the Proposed Rules recognize the functional equivalence between adjudications in juvenile court and criminal trials. Proposed Rule 27.04 provides that "The court shall admit only such evidence as would be admissible in a criminal trial." Even more importantly, Proposed Rule 27.05 clearly provides that "To be proved at trial, allegations in the petition must be proved beyond a reasonable doubt." This is the standard of proof for criminal proceedings as clearly enunciated in Winship.

In denying juveniles the right to a jury trial in McKeiver, the Court fundamentally eroded the profound insights of Winship. The jury is the carrier of the community's norms and functions as a barrier between the state and the defendant. When judges and juries differ about the outcome of a trial, juries are more likely to acquit than are judges. See H. Kalven & H. Zeisel, The American Jury (1971). This tendency is attributable to basic differences in jury versus judge evaluations of evidence, as well as to such factors as jury sentiments about the "law" (jury equity) and jury sympathy for the defendant. One of the most significant functions of juries is to uphold the reasonable doubt standard. After accounting for other sources of judge/jury verdict disagreement, it appears that juries employ a higher

evidentiary threshold standard of "proof beyond a reasonable doubt" than do judges. As Kalven and Zeisel conclude, "If a society wishes to be serious about convicting only when the state has been put to proof beyond a reasonable doubt, it would be well advised to have a jury system." Id. at 189-90. Given the importance of juries in this regard, the Supreme Court's decision in McKeiver to dispense with juries in juvenile court must be seen as rendering it somewhat easier to convict a youth appearing before a judge in juvenile court than to convict him on the basis of the same evidence before a jury of detached citizens in adult proceedings. Kalven and Zeisel also found that one characteristic eliciting jury sympathy was the youthfulness of the defendant. While their research was confined to adult proceedings, they concluded that in that context the youth of a defendant was a personal characteristic that engendered the greatest jury sympathy. See id. at 209-13. This finding also buttresses the conclusion that it is easier to obtain convictions in juvenile court without a jury than in adult proceedings with one. Thus, McKeiver appears to undercut the Court's mandate in Winship that the same standard of proof beyond a reasonable doubt is constitutionally required in both juvenile and adult proceedings. The difference between "judge-reasonable doubt" and "jury-reasonable doubt," coupled with the greater flexibility and informality of the juryless, closed proceedings in juvenile court may produce some important differences in adjudicatory outcomes, with all of the disadvantages accruing to the juvenile.

Protection against Governmental Oppression

In its McKeiver decision, Justice Blackmun's plurality opinion emphasized the "rehabilitative ideal" of the juvenile court as distinguished from the criminal law's emphasis on punishment and individual responsibility as the linch-pin of the decision. Similarly, in Justice White's concurrence, the emphasis was on the differences between criminal courts and juvenile courts, noting that "in theory and in practice, there remains a substantial gulf between criminal guilt and delinquency..." 403 U.S. at 553.

Whatever the rehabilitative justifications for denying juries to juveniles in McKeiver may have been, they are clearly no longer applicable to juvenile justice in Minnesota. During the 1980 legislative session, the Legislature rewrote the juvenile code so as to reject the fundamental "rehabilitative" assumptions of the juvenile court and virtually eliminate the "substantial gulf" between juvenile and adult proceedings. See generally, Feld, "Juvenile Court Legislative Reform and the Serious Young Offender: Dismantling the 'Rehabilitative Ideal'," 65 Minnesota Law Review 167, 192-242 (1981).

Of immediate significance for the Supreme Court's rationale in McKeiver is the fact that the Minnesota legislature redefined the fundamental purpose of the juvenile court. The previous purpose of the juvenile code was to secure "for each minor... the case and guidance, preferably in his own home as will serve the...welfare of the minor and the best interests of the state." Minnesota Statute 260.011 (1959). Under the new legislation, the exclusively benevolent and rehabilitative purpose of the

juvenile court remains only for children "alleged or adjudicated neglected or dependent." For those youths charged with crimes, however,

> the purpose of the laws relating to children alleged or adjudicated to be delinquent is to promote the public safety and reduce juvenile delinquency by maintaining the integrity of the substantive laws prohibiting certain behavior and by developing individual responsibility for lawful behavior. Minnesota Statute § 260.011 (2) (1980).

Maintaining the integrity of the substantive criminal law and developing individual responsibility for lawful behavior marks a fundamental philosophical departure from the previously rehabilitative purposes of the juvenile justice system to a much more explicitly punitive and social control purpose.

The change in the juvenile code's purpose clause embodies a fundamental, philosophical shift in the treatment of juvenile offenders. Historically, juvenile courts were viewed as rehabilitative social service agencies functioning as surrogate parents for youngsters who had incidentally violated the law. The amended purpose clause, with its emphasis on promoting public safety and reducing delinquency, reflects a substantial repudiation of the deterministic and immaturity assumptions of earlier juvenile justice. Although the juvenile court's new purpose statement is similar to that of the Criminal Code, the adult criminal code ironically articulates a greater commitment to the "rehabilitative ideal" of justice than does that for juveniles. The criminal code is intended to

> protect the public safety and welfare by preventing the commission of crimes through the deterring effect of the sentences authorized, the rehabilitation of those convicted, and their confinement when the public safety and interest requires. Minnesota Statute § 609.01 (1) (1) (1978).

A number of important philosophical, administrative and procedural differences between juvenile courts and adult criminal courts are premised on the different emphases placed on treatment and punishment in the two systems. Thus, juvenile court proceedings are conducted informally, confidentially, and without juries. The Supreme Court's denial of jury trials to juveniles was premised on the assumption that juveniles were in fact receiving rehabilitative treatment. The changes in the purpose of Minnesota's juvenile court conflicts with the basic premise of the McKeiver Court in denying juries to juveniles--that juvenile court systems are primarily committed to the rehabilitation of young offenders. When the legislature departs from these rehabilitative purposes to emphasis more punitive, traditional criminal law purposes, the legislature may in fact have repudiated the treatment differences that distinguish the juvenile and criminal system and that justify denying juveniles the right to trial by jury.

Other states that have amended their juvenile code purpose clauses to emphasize public safety and retribution have been confronted with the issue of a juvenile's right to trial by jury. The state of Washington, for example, undertook a far reaching revision of its juvenile code that included a purpose clause similar to Minnesota's new punitive purpose clause. Washington Revised Code § 13.40.010(2) (West Supp. 1980). In State v. Lawley, 591 P.2d 772 (1979), a juvenile argued that the changes in the Washington juvenile code had "altered the law's focus from concern for treatment and rehabilitation of the juvenile to imposition of punishment according to the offense

and the record of the juvehile. Therefore...the proceedings were in the nature of a criminal prosecution entitling him to a jury trial as part of due process." Id. The Washington Supreme Court acknowledged that emphasis on accountability for criminal behavior and punishment based on the juvenile's present and past offenses could effectively convert juvenile proceedings into criminal proceedings. However, the Court relied on the dubious rationale that sometime "punishment is treatment", id. at 773, and held that the legislature could permissibly conclude that "accountability for criminal behavior, the prior criminal activity, and punishment commensurate with age, crime, and criminal history does as much to rehabilitate, correct and direct an errant youth as does the prior philosophy of focussing upon the particular characteristics of the individual juvenile." Id.

A strong dissent in Lawley by Justice Rosellini reasoned that because juvenile court proceedings first adjudicated the alleged offense, and then punished the offender in proportion to the offense adjudicated, a jury trial was required. Justice Rosellini analyzed the Washington purpose clause and concluded that

> the legislature has made it clear that it is no longer the primary purpose of the juvenile justice system to attend to the welfare of the offending child, but rather to render him accountable for his acts, to punish him, and to serve society's demand for retribution. While the punishment prescribed may well be less than that imposed upon offending adults for the same offense, it nevertheless involves...a loss of liberty...no longer is the punishment geared to fit the needs of the child rather it is related to the seriousness of the offense...Thus, the system has been converted from one which was or ostensibly was designed to protect and rehabilitate the child to one which is designed to protect society. The present act focuses upon the purposes which are generally served by adult criminal law. Id. at 775-76.

Justice Rosellini reasoned that while the McKeiver Court was reluctant to constitutionally impose jury trials on state juvenile proceedings that were at least nominally rehabilitative, once the legislature reshaped the purpose of the juvenile system, the judiciary had a fundamental obligation to recognize that jury trials are an essential element of due process in a system of justice which punishes offenders, regardless of their age or the nominal system in which they are being punished.

When the legislature chooses to shape behavior through punishment, the procedural safeguards of the criminal law must be observed despite any possible social benefits that may accrue. Although the length of confinement of a juvenile may be less than that of an adult, and the place of confinement not as explicitly punitive, confinement per se entails a loss of liberty imposed for violations of the law, and sentences that are geared to the nature of the offense committed rather than the offender do not take into account a youth's "need" for such penal restraint. As juvenile proceedings become increasingly formal and "criminalized," courts are often being asked "whether so many of the attributes of a juvenile proceeding have been discarded that the proceeding is in effect 'criminal' in nature." In re Felder, 402 N.Y.S.2d 528, 529 (1978) Whether a juvenile's disposition is in effect treatment or punishment is not readily apparent, especially when a court, as in Lawley, confounds both language and reason to conclude that sometimes "punishment is treatment".

Other courts have been more sensitive to some differences between punishment and treatment, and have recognized that when the "protections provided to the juvenile criminal offender

have been so eroded away that what is actually punishment is characterized as a treatment, an abuse of constitutional dimension has occurred, and, a jury trial is required before punishment, although appropriate, may be inflicted." In re Felder, 402 N.Y.S.2d at 531.

There are some analytical tools available to aid courts in determining whether the purpose of a juvenile's disposition is punishment or treatment. Dispositions based on considerations of the offense--retribution or deterrence--are characteristically determinate and proportional; those based on considerations of the offender--rehabilitation or incapacitation--are typically indeterminate. "The distinction between indeterminate and determinate sentencing is not semantic, but indicates fundamentally different public policies. Indeterminate sentencing is based upon notions of rehabilitation, while determinate sentencing is based upon a desire for retribution or punishment." Id. at 533. Indeed, the recently adopted Minnesota Sentencing Guidelines are clear evidence of the relationships between the underlying policies of "just deserts" or retributive sentencing and a determinate sentencing structure. Minnesota Sentencing Guidelines Commission, Report to the Legislature (1980).

Applying this simple test of the penal consequences of juvenile adjudications clearly reveals that in actual practice, the purposes for which youths are sentenced in Minnesota are punitive not rehabilitative. One provision of the revised juvenile code allows juvenile courts to "require the child to pay a find of up to $500." Minnesota Statute 260.135(1)(f)(1980) This is a punitive disposition, not a rehabilitative one. Indeed,

in one of the earliest juvenile codes in the country, the Michigan Supreme Court held that a statute that allowed a juvenile court to fine a delinquent only $25 "can have no other purpose than punishment for a delinquency." Robinson v. Wayne Circuit Judges, 151 Mich. 315, 326 (1908)

At the same time that the legislature granted juvenile courts the authority to levy fines, the Minnesota Department of Corrections administratively implemented a plan providing for determinate sentences in juvenile institutions based on a juvenile's present offense and prior record. Minnesota Department of Corrections, Juvenile Release Guidelines 3 (1980) The new guidelines are intended to "provide a more definite and distinct relationship between the offense and the amount of time required to bring about positive behavior change." Id. at 2. A juvenile's length of stay is calculated on the basis of the severity of the most serious committing offense and a weighing of "risk of failure" factors that include prior felony adjudications and probation and parole failures. Id. at 3, 5. These are exactly the same factors which underlie the sentencing grid in the adult Minnesota Sentencing Guidelines. Thus, the Department of Corrections' decision to implement presumptive determinate sentences for juveniles which are similar to those mandated by the adult guidelines are clearly a repudiation of "individualization" and rehabilitation and a step toward determinacy and retributive punishment.

The use of juvenile adjudications have other penal consequences beyond simply the immediate disposition. Under the legislative amendments to Minnesota Statute 260.125 Subd. 3,

a youth's present offense and prior adjudications of delinquency can also constitute a prima facie case for reference for prosecution as an adult. See Feld, "Juvenile Court Legislative Reform and the Serious Young Offender: Dismantling the 'Rehabilitative Ideal'", 65 Minnesota Law Review 167, 194-5, 207-22 (1981). Every felony adjudication in juvenile court becomes one more nail in the coffin of waiver for adult prosecution. The legislature's decision to make certain combinations of present offense and prior record a prima facie case for certification is further evidence of the punitive, nonrehabilitative purposes of the juvenile court and an additional justification for the use of jury trials in juvenile adjudications. By using offense characteristics rather than offender characteristics as a basis for making certification decisions, the legislature was clearly relying upon retributive punitive rationales for making the waiver decision rather than the more traditional, rehabilitative ones. Under the new waiver provisions, the court is no longer required to consider the youth as an individual, and it can refer him for adult prosecution solely on the present alleged offense and prior record.

Finally, the requirement that a juvenile's post-16 felony adjudications as a juvenile must be used to enhance sentences within the adult sentencing guidelines further erodes the "substantial gulf" between juvenile and adult proceedings. Under the Minnesota Sentencing Guidelines, prior juvenile felony adjudications count up to a maximum of one point within the adult criminal history score, and depending upon the nature of the adult offense, can make a substantial difference in the length of time

that a person with a prior juvenile record may serve when sentenced as an adult. See Minnesota Sentencing Guidelines, Report to the Legislature 29 (1980). There are a number of important criminal policy reasons that support the Sentencing Guideline Commissions decision to include a component of the juvenile's criminal history as part of the adult sentencing decision. See Feld, supra. See also, Feld, "Legislative Policies toward the Serious Juvenile Offender: On the Virtues of Automatic Adulthood," 27 Crime & Delinquency 497 (October, 1981.) Despite these important policy justifications for the Commission's decision, however, they provide additional support for the conclusion that juvenile adjudications have penal and punitive consequences that require the interposition of a jury.

It is important to note that the Sentencing Guidelines Commission was aware of the denial of procedural safeguard in juvenile proceedings. Although they properly mandated the use of juvenile records in adult sentencing, they attempted to temper the injustice of counting juvenile convictions fully because of the constitutional deficiencies in the adjudicatory process. The Commission limited the use of juvenile records to one point in the criminal history score. "The one point limit also was deemed advisable to limit the impact of adjudications obtained under a juvenile court procedure that does not afford the full procedural rights available in adult courts." Minnesota Sentencing Guidelines and Commentary, Training Material, Comment II.B.405.

Viewed as a whole, these revisions and developments eliminate almost all remaining distinctions between juvenile and adult criminal proceedings. Except for the absence of jury trials,

juvenile court proceedings now encompass all of the trappings of a criminal prosecution. The ramifications of juvenile felony convictions for eventual adult waiver and adult sentences make juvenile adjudications far more significant than they had been previously. The use of determinate sentences in juvenile institutions, based on the present offense and prior record, calls into question the "therapeutic" rationale of juvenile dispositions. Moreover, the juvenile code's revised purpose clause, with its greater emphasis on the integrity of the substantive criminal law, eliminates even rhetorical support for the traditional rehabilitative goals of juvenile justice. Whether Minnesota can still constitutionally deny jury trials to juveniles because they are being "rehabilitated" within the juvenile justice system is a question that this Court must now answer.

Regardless of the Minnesota Supreme Court's assessment of the validity of the Court's decision in Mckeiver as a matter of Federal Constitutional Law, a state is free to interpret its own constitution and may apply stricter constitutional standards than the United States Supreme Court is willing to do under the Federal Constitution. If the Minnesota Supreme Court decides the issue as a matter of its interpretation of the state constitutional guarantee of jury trials, then jury trials must be granted in juvenile court.

Article I, Section 6 of the Minnesota Constitution states:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury...

In a carefully reasoned opinion interpreting the nearly identical provisions of the Alaska Constitution, the Alaska Supreme Court

held, as a matter of state constitutional law that juveniles are entitled to a jury trial. R.L.R. v. State 487 P.2d 27 (1971) The Alaska Juvenile Code that was being examined in R.L.R. had many more of the traditional indices of a rehabilitative juvenile court than does the juvenile code now controlling in Minnesota. If juveniles in Alaska are entitled to trial by jury for acts which would be crimes if committed by an adult, surely, under the identical provision of the Minnesota Constitution, juveniles are similarly entitled to trial by jury. As the Alaska Supreme Court said, to treat a juvenile delinquency proceeding differently from an ordinary adult criminal prosecution for purposes of the right to trial by jury would be "cynical and unprincipled." Id. at 33.

There were a number of policy issues that troubled Justice Blackmun in his McKeiver decision that influenced that opinion. He was concerned with the administrative burdens entailed by jury trials, the greater formality and adversariness associated with jury trials, and the loss of confidentiality. In fact, however, these are not significant considerations and should not be used to deny juveniles their constitutional rights.

Administrative Burden

One of the reasons that the McKeiver court advanced for denying jury trials was the administrative burden that such an obligation would impose on juvenile courts. However, the right to trial by jury for juveniles does not mean that juveniles would exercise that right in every case. In a study conducted in conjunction with the McKeiver litigation in those jurisdic-

tions where jury trials were provided for juveniles, the National Juvenile Justice Center concluded "where a jury trial is available by statute, it is seldom used and creates no burden on the juvenile court system,...none of the data collected indicates that the extension of this right to the remaining states would significantly affect the efficiency of the operation of the juvenile courts." Burch and Knaup, "The Impact of Jury Trials in the Administration of Juvenile Justice," 4 Clearinghouse Review 360 (1970). Indeed, the right to jury trials in adult criminal proceedings does not mean that all adults therefore elect to have their cases tried before a jury. In Hennepin County in which more than 18,000 defendants were prosecuted for felonies, gross misdemeanors, or misdemeanors in 1979, less than 2% of those defendants were tried by a jury. If a comparable number of juveniles elected to be tried by a jury, there would be perhaps 50 jury trials in Hennepin County. The right to trial by jury is an important right, even if it is seldom exercised. The jury provides a needed check on the exercises of discretion throughout the process, and its mere availability is an affirmation that juveniles will not be deprived of their constitutional rights, or their liberty, simply because of their age.

Formality and Adversariness

The McKeiver court was also concerned that granting jury trials in juvenile court would destroy the informality of the juvenile court. However, the Supreme Court also noted in Gault that under the guise of informality, many juveniles may have been treated unjustly and arbitrarily. The Court observed in

Gault, 387 U.S. 1, 18, that "the powers of the star chamber were trivial in comparison to those of our juvenile courts." In particularly harsh language, the Court adverted to the fact that "under our constitution, the condition of being a boy does not justify a kangaroo court." Id. at 28.

Whatever the idealistic version of the rehabilitative juvenile court may once have been, it is simply too late in the day to argue that it is still an informal, non-adversarial proceeding. Those contentions were formally laid to rest in Gault and subsequent legislation implementing it. The juvenile trial today has all of the formality of an adult criminal proceeding. A robed judge presides, a formal transcript is maintained, formal written notice is required, and the like. Moreover, the 1980 legislative amendments made all of the rules of evidence applicable to juvenile court proceedings, Minnesota Statute § 260.155 (1)(1980), and even the Proposed Rules specifically provide for the application of all of the rules of criminal evidence. Proposed Rule 27.04. The juvenile is guaranteed the right to "effective assistance of counsel," Minnesota Statute § 260.155 Subd. 2 (1980), and effective counsel is permitted to confront and cross-examine adverse witness, call witness by compulsory process, and the like. When Gault made the privilege against self-incrimination applicable to juvenile proceedings, it converted juvenile trials into fully adversarial proceedings. Thus, the introduction of jury trials in a juvenile court, the only procedural constitutional right which youths are denied solely because of their age would not alter the ways in which trials are currently conducted in juvenile court.

Confidentiality

The McKeiver court was also concerned that granting juveniles jury trials would detract from their confidentiality and turn them into fully public proceedings. However, the historical claims of confidentiality in juvenile court proceedings have been subjected to much question and criticism. The Supreme Court's decision in Gault rejected this contention as a rationale for denying due process and said that "this claim of secrecy, however, is more rhetoric than reality." Id. at 24. The Court noted that juvenile records were routinely made available to the FBI, military services, governmental agencies, local law enforcement officials, and even private employers. Moreover, the new legislative amendments specifically require the juvenile courts of Minnesota to preserve a youth's records and make them available to adult sentencing courts where the existence of juvenile records will clearly be made public. Minnesota Statute § 260.161 (1)(1980).

In Davis v. Alaska, 415 U.S. 308 (1974), the Supreme Court held that juvenile records of a witness at a trial must be disclosed so that he may be impeached by those records. The Court rejected the state's claim of the need to protect the confidentiality of the juvenile offender's record, ruling that the interest in confidentiality clearly did not outweigh the defendant's constitutional right to confront and cross-examine witness. Similarly, the Court ruled that a state could not punish a publication which revealed information about juvenile court proceedings which had been lawfully obtained. In Smith v. Daily Mail Publishing Company, 99 S. Ct. 2667 (1979), the court followed its reasoning

in Davis and held that "the constitutional right must prevail over the state's interest in protecting juveniles..." Id. at 2671.

The A.B.A.'s Juvenile Justice Standards, Adjudication § 6.1 also recommend public trials of juveniles. The Supreme Court has long acknowledged the substantial affirmative benefits of public trials. In In re Oliver, 333 U.S. 257 (1948), the court held that "the knowledge that every criminal trial is subject to contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power." Id. at 270. Justice Brennan's concurring and dissenting opinion in McKeiver was based on the fact that in one of the cases under consideration, the juvenile's trial was a public proceeding and that the openness of proceedings worked in the same way as a jury trial to protect the accused against oppression by improper prosecutorial or judicial behavior. 403 U.S. at 554-55 (1971).

There is also the reality that in our larger, metropolitan areas, most adult criminal cases which are nominally public, in fact benefit from urban anonymity and rarely come to the public's attention. Similarly, in smaller, rural areas, provisions for confidentiality cannot prevent people from being aware of what is transpiring within their communities.

Finally, there is the question of what benefits are actually derived from informal, confidential proceedings. For every argument about the dangers of stigma or the virtues of informality, there is a counter argument that formality and accountability may help to encourage responsibility, and impress upon the

juveniles the significance of criminal misconduct. Ultimately, the question for this Court is a fundamental policy choice that cannot be resolved by reference to a theoretically rehabilitative juvenile justice system that did not exist in the past, and clearly does not exist today. Compare, Rothman, Conscience and Convenience (1980) with Feld, Neutralizing Inmate Violence: Juvenile Offenders in Institutions (1977). Only this Court can put the "justice" into juvenile justice.

Proposed Rule 32. Reference of Delinquency Matters.

As the Court is aware, I have devoted considerable attention to the issues surrounding waiver of youths for prosecution as adults. See Feld, "Reference of Juvenile Offenders for Adult Prosecution: The Legislative Alternative to Asking Unanswerable Questions," 62 Minnesota Law Review 515 (1978); Feld, "Juvenile Court Legislative Reform and the Serious Young Offender: Dismantling the 'Rehabilitative Ideal'", 65 Minnesota Law Review 167 (1981); Feld, "Legislative Policies Toward the Serious Young Offender; On the Virtues of Automatic Adulthood," 27 Crime & Delinquency 497 (1981).

The Minnesota Supreme Court has relied upon my analyses of the waiver problems on a number of occasions. See e.g., In re Dahl, 278 N.W.2d 316 (1979); State v. Givens, N.W.2d (1981). As the Court noted in Dahl, 278 N.W.2d at 318, the issues of waiver are very troublesome and "Unfortunately, the standards for referral adopted by present legislation are not very effective in making this important determination." The 1980 Legislative revisions of Minnesota Statute 260.125 Subd. 3 and the adoption of offense criteria which constitute a prima facie case for adult prosecution were part of the legislature's effort to refine the criteria for certification in response to Dahl. See Feld, "Juvenile Court Legislative Reform and the Serious Young Offender: Dismantling the 'Rehabilitative Ideal'", 65 Minnesota Law Review 167 at 207-222 (1981).

Proposed Rule 32 builds on the revised legislative framework, but then compounds all of the inherent difficulties of the reference process. In Proposed Rule 32.05 Subd. 2 (a) - (j), the drafters

add a list of additional criteria for the referring court to consider when making the waiver decision. These criteria are drawn primarily from the United States Supreme Court's decision in Kent v. United States, 383 U.S. 541, 566-67. The criteria in Proposed Rule 32.05 Subd. 2 were dicta when Kent was decided, and add absolutely nothing by way of guidance to a waiving court in making this "critically important" decision. Most of the criteria are duplicative of the issues to which juvenile courts are already directed under the statute. For example, what is the difference between the statutory consideration of an "aggravated felony" and the "seriousness of the offense"? What is the difference between acting with "particular cruelty or disregard for the life or safety of another", Minnesota Statute 260.125 Subd. 3 (1)(a) and the proposed criterion "whether the child acted with particular cruelty or disregard for the life or safety of another"? Proposed Rule 32.05 Subd. 2 (i). In short, all of the relevant factors that can be considered are already subsumed by the statutory criteria or the more general issues of amenability to treatment and threat to public safety. The listing of a host of imprecise, meaningless factors without any guidance with respect to the weight to accord to any factor, how to evaluate the "sophistication and maturity of the child", or the like is simply surplussage which adds nothing to a court's resolution of the problem. The court should strike all of the Kent criteria as merely duplicative of the already existing and inadequate statutory criteria.

The Court should also take this opportunity to reconsider the fundamental premises of the entire statutory waiver framework.

As I concluded in a recent article, the problem of waiver lies in the underlying assumption that it is even possible for courts to answer the inherently unanswerable questions that the waiver statute poses.

> Despite the extensive changes it made, the Minnesota Legislature must be faulted for failing to address the fundamental inadequacies of the waiver criteria --amenability to treatment and dangerousness. While the prima facie case option may facilitate more certifications, most cases will continue to be resolved by a prediction of a juvenile's amenability to treatment or dangerousness based on a greatly expanded court record. The legislature's insistence that juvenile courts address and answer these inherently unanswerable questions is the continuing and fundamental flaw of the entire legislative scheme. Requiring courts to collect clinical, psychological, and social data, which ultimately has only marginal utility in making predictive determinations, forces judges to engage in standardless, arbitrary, and discretionary decisionmaking. Adopting a prima facie case standard or shifting the burden of proof does not resolve the problems posed by the inherently vague waiver criteria. Thus, the futility of using waiver standards that require essentially subjective decisions based on soft evidence and inadequate predictors remains.
> Feld, "Juvenile Court Legislative Reform and the Serious Young Offender: Dismantling the 'Rehabilitative Ideal'", 65 Minnesota Law Review at 239-40 (1981)

As I have noted elsewhere, the inherent problem of the statute and the Proposed Rule 32 is its fundamental vagueness in violations of elementary concepts of due process. Feld, "Reference of Juvenile Offenders for Adult Prosecution: The Legislative Alternative to Asking Unanswerable Questions," 62 Minnesota Law Review 515, 546-556 (1978). If the Court is committed to adopting criteria for the waiver decision, it would do well to consider the adoption of explicit offense criteria providing for waiver exclusively on the basis of proof of various combinations of present offense and prior record. That at least provides a

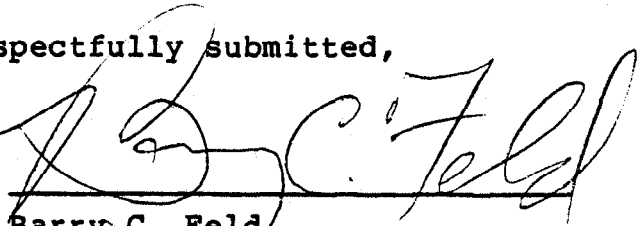
just, fair, and even-handed basis on which to make this critically important decision. See id. at 573-81.

Proposed Rule 32.01 provides that "Proceedings to refer a delinquency matter pursuant to Minn. Stat. 260.125 may be initiated only upon motion of the county attorney." By restricting authority to initiate waivers to the county attorney, the Proposed Rule is in direct conflict with the ruling of the Minnesota Supreme Court in In re I.Q.S., 244 N.W.2d 30 (1976), in which the Court held that:

> Although the entire juvenile system involves the waiver of certain constitutional rights in favor of the protection, programs and special features afforded juveniles, any child not wishing to avail himself of this treatment could certainly demand his constitutional right to be, for example, tried by a jury. Id. at 37.

Proposed Rule 15.03 describes the mechanisms by which juveniles may waiver their constitutional rights in juvenile courts, but it makes no allowance for a juvenile who wishes to waive his "statutory" right to be prosecuted as a juvenile and insist upon his right to be tried as an adult. The Proposed Rule 32.01 should be amended to permit juveniles as well as county attorneys to file motions for adult reference.

Respectfully submitted,

By 

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A-12

CITY OF SAINT PAUL
DEPARTMENT OF POLICE

Wm. W. McCutcheon, Chief of Police
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GEORGE LATIMER
MAYOR

October 22, 1982

A-12

State of Minnesota Supreme Court
C/O Clerk of Supreme Court
Minnesota State Capital Building
St. Paul, MN 55155

In Re Proposed Rules of Procedure for Juvenile Court.

Honorable Members of the Minnesota Supreme Court:

As the officer in charge of the Juvenile Unit of the St. Paul Police Department I find two proposed rules which I oppose as they have the potential to cause problems, difficulties and wasteful delays in accomplishing our task.

Rule 6 as proposed necessitates the presence of and written consent by the childs' parents or guardian, etal.

In everyday practice this rule would cause many problems and time consuming delays. Very often we cannot contact or locate parents for hours. This is especially true on evenings and weekends. During working hours on weekdays we often find that parents cannot or will not appear until the end of their workday. We often mail requests for interviews to parents which are unanswered.

Other problems would arise with children in town on a holiday, school field trips, or as runaways and not accompanied by parents who are often many miles away. These children get involved at times in offenses such as theft, burglary or car theft.

Another problem arises in those cases where the parent is a co-defendant, complainant, perpetrator, or openly hostile to the child. There are times too when the parents are not in proper mental condition to be given such responsibility or authority (as when they have been drinking).

In cases where the time element is very important rule 6 would often be an extreme handicap.

In Re Proposed Rules of Procedure for Juvenile Court.

In general, this rule would cause an unnecessary back log of case work especially in these days of limited resources. In reviewing our present practices I feel the proposed rule is not based on any demonstrated need or benefit.

Proposed rule 18.09 should be eliminated. As it is written it deviates from the present system which has proven to be very fair and workable. Conceivably, under this proposed rule court hearings may be necessary evenings, nights, or on Saturdays, Sundays, and even all holidays including the major ones. Since the very nature of these cases render the timing unpredictable, the taking of custody cannot be regulated on any form of schedule. To fully comply would necessitate very wastful scheduling of personnel by the responsible agencies.

Your judicious consideration of these objections is requested.

Sincerely,

Wm. McCutcheon, Chief of police
Lloyd D. Buhl, Captain Juvenile Unit

CC: File 2

10-29-- Copy to each Justice

WARREN E. LITYNSKI
Judge of Nicollet County Court
Nicollet County Courthouse
P.O. Box 496
St. Peter, Minnesota
56082
507/931-6800 EXT. 225

A-12

October 28, 1982

Supreme Court of Minnesota
230 State Capitol
St. Paul, Minnesota 55155

IN RE: Proposed Rules of Procedure for Juvenile Court

Dear Supreme Court Justices;

After careful review of the proposed rules I would advise you that I am in accord with the Position Paper that will be submitted by Mr. Robert Scott of Anoka County, with the following exceptions:

Rule 17: This obviously refers to procedures after a petition has been filed; since by statute the Court has no jurisdiction until a petition has been filed. I would suggest adding at the beginning these words, "After a petition has been filed.....".

Most counties have developed informal means of handling cases. Some of these take place prior to the filing of a petition, but under the present law there is no provision for pre-petition diversion. This rule would clarify that and place all diversion under the supervision of the Court after a petition has been filed.

Rule 22.05: Rule should remain as proposed.

Rules 24.01 and 24.02: The time requirement should be stricken entirely as part of the rule. A time could be established by local court rule, or in the unlikely event there are problems, they could be resolved by pre-trial conference.

Rule 30.03 Subd. 5: The rule should provide for an oral report in Court. No pre-disposition hearing discussion is necessary. The person preparing the report could simply summarize the report in Court. Counsel for the child should have the right to review the written report prior to the disposition hearing.

I agree with Mr. Scott on the remaining rules; however, I have a few additional comments regarding the necessity of parental involvement and consent as proposed (see e.g., rules 15 and 21).

Rule 3 provides that the parents do not have a right to participate until the allegations of the petition have been proved. By making it necessary for a parent to consent to his child's waiver of rights doesn't he necessarily become a participant?

It only follows that the parent may wish to confer with his or her own counsel before agreeing to consent.

The problem of potential civil liability is always around the corner. If the parent makes a decision with substantial adverse consequences to the child,

will the Court some day impose civil liability.

Parents are around for support and informal advice. They should not be active participants.

Yours truly;

Warren E. Litynski
Judge of County Court

WEL:dm

cc: Robert Scott
Honorable Conrad Garrenstroom

10-29-- copy to each Justice

A-12

Hennepin County Juvenile Advisory Committee

14600 Minnetonka Boulevard Minnetonka, MN 55343

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Vice-President
DENNIS SMITH
Golden Valley P.D. 545-3782

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Minnetonka P.D. 933-2511

October 28, 1982

The Justices of the Supreme Court
State of Minnesota
C/O John McCarthy
Clerk of the Supreme Court
230 State Capitol
St. Paul, Minnesota 55155

Re: Proposed Rules of Procedure for Juvenile Court

Dear Justices:

This letter is written on behalf of the Hennepin County Juvenile Officers Association to inform you that we take the position that the implementation of the proposed Rule 6 as it deals with the juveniles' right to speak with a police officer in an investigative situation in the absence of his parents is not in the best interest of the juvenile, his parents, or society.

First, the Juvenile Court was founded on the ideal of rehabilitation of youthful offenders. This was based on the belief that juvenile offenders, due to age and degree of sophistication, can best be identified along with the causation factors for their delinquency, and the court could then order the best course of action for the juvenile for correcting his behavior. The court saved incarceration as a last resort. If we now required both the presence of the youth and his parents plus a written waiver from both, it will become extremely difficult to positively identify youthful offenders and their problems so that they could then be referred to Juvenile Court for appropriate action. Next, juvenile officers in Hennepin County have noted that on numerous occasions they have difficulty in locating a parent due to there being no phone at home, juvenile giving false name and address, parents not at home, parents living out of town, parents work number is unknown or the parent is not available to leave work to come into the police department. Due to the nature of some investigations, the juvenile could not be released until officers had an opportunity to question them. In some of these cases, time also may be critical in recovering evidence or apprehending others involved.

All juvenile officers also have had contact with the parent who won't come in, has no way to come to the station, wants to wait until morning, wants the juvenile to be held a few days to "teach him a lesson", or states "he has made his bed, now let him lie in it".

Then there are the parents who sit in on the interview, but their presence creates an atmosphere where the juvenile doesn't wish to speak with the officer or minimizes the incident. This atmosphere can be created by the parent's unconscious non-

verbal signals to the child, by the parent answering the questions asked of the child, by the parent questioning the officer on the questions asked, or the child who doesn't want to admit criminal activity that might shame his family or hurt his parent's feelings. Also, there is the parent who stops the interview when their child begins to admit the offense.

One also must look at the youth of today and consider how much more aware and informed they are in issues that affect them. This is a result of both the educational process and the high influence and saturation that both the audio and video media play in everyday lives of juveniles. This should be combined with the fact that juveniles have been given more and more responsibility at an earlier age by both their families and society. The Court also has given juveniles many of the rights they have already guaranteed to adults in criminal matters. It then seems to be contradictory to turn around and now say solely that because one is below the age of majority that he cannot decide on his own to waive his constitutional rights to speak with the police.

We must also consider what the responsibility of the parent is for their child and their actions. Is it the parents who are under investigation or is it the child for what the child has done? Was it the parent who decided or encouraged the criminal activity or was it the child? If the juvenile was able to imagine and then carry out the crime, should he not, because of age alone, be allowed to be questioned about this activity? The Court must consider who suffers the most if the youth can escape identification and court intervention because his parents must also be present and also waive the child's rights or he could not be questioned.

Finally, one must consider the effect that this could have on victims of crimes. If juveniles avoid prosecution due to the fact that under the new Rule 6 the police could not gain the necessary information they needed to solidify their case and the case would not then be presentable for Court, then both the offender and the victim lose as neither get the help that they need. The youthful offender is still free to terrorize society and the victim becomes bitter at youth and the Juvenile Court system for allowing an offender to be free due to new and questionable rights for juveniles.

In conclusion, we are opposed to Rule 6 and feel that the position paper written by Assistant County Attorney Robert Scott of Anoka addressed our interest and objection very clearly. We must not allow the youth of the state to feel that they are not responsible for their actions, and that they can get out of trouble by finding loopholes in the system. Youth must learn at an early age that they are accountable for their actions.

Thank you for your consideration of our concerns in this matter.

Sincerely,

Dennis H. Smith

Dennis H. Smith, Vice-President
Hennepin County Juvenile Officers Committee

DHS:ga

10-29-- copy to each Justice

City of Golden Valley

October 30, 1982

Clerk
Minnesota Supreme Court
State Capitol
St. Paul, Minnesota 55155

A-12

Dear Clerk:

Please be advised that the Hennepin County Juvenile Officer's Association wishes to be heard at the public hearing which is to be held on November 16, 1982, before the Honorable Justices of the Minnesota Supreme Court regarding the proposed Rules of Procedure for Juvenile Court.

Please be advised that the Hennepin County Juvenile Officer's Association has taken a position in opposition to the proposed Rule 6. We are opposed to this rule for the reasons outlined in the Minority Report of the Task Force on Rules to the Supreme Court.

We will request that the Court modify this rule as outlined in said Minority Report.

Respectfully submitted,

Dennis H. Smith

Dennis H. Smith
Vice President
Hennepin County Juvenile Officer's
Association

DHS:jk

SUPREME COURT
FILED
NOV 1 1982
JOHN McCARTHY
CLERK

11-1 -- copy to each Justice

A-12

AIRPORT POLICE DEPARTMENT

MINNEAPOLIS-ST. PAUL INTERNATIONAL AIRPORT
WOLD-CHAMBERLAIN FIELD TELEPHONE (612) 726-1177
SAINT PAUL, MINNESOTA 55111

October 27, 1982

A-12

The Justices of the Supreme Court
State of Minnesota
% Mr. John McCarthy
Clerk of the Supreme Court
230 State Capitol
St. Paul, Minnesota 55101

Dear Justices:

As a member chief of the Hennepin County Chiefs of Police Association, I support their positions in opposing Rule Six and Rule Eighteen of the proposed new Rules of Procedure for Juvenile Court.

Rule Six appears to be contrary to numerous statutues, court rules and supreme court decisions at both the State and Federal levels. A more logical determining factor on the admissability of juvenile confessions is found in the present system of the "totality of circumstances" test. This test has been found widely acceptable across the nation. The rule should be stricken.

Rule Eighteen, requiring that a juvenile be released from detention within thirty-six hours if the court has not ordered continued detention, and within twenty-four hours if a request for detention hearing has been made and the court has not ordered continued detention should be stricken or substantially changed to allow for Sundays and holidays. Also, the time in detention should begin at midnight of the day of detention to more closely follow the adult rules as stipulated in the Minnesota Rules of Criminal Procedure.

Assistant Anoka County Attorney, Mr. Robert Scott, has prepared and submitted to the Court, a document entitled, 'Minority Report to the Proposed Juvenile Court Rules". This report appears to have been prepared after a great deal of research and is based on sound logic in arguing against both of these proposed rules.

Respectfully submitted,

Maurice R. Johnson

Maurice R. Johnson
Superintendent of Police
Airport Police Department

MRJ:kao

10-29-- Copy to each Justice

DISTRIBUTED -- Enter in Book A-12

Office of

WINONA COUNTY ATTORNEY

JULIUS E. GERNES

Court House
Winona, Minn. 55987

Telephone:
(507) 452-3311

October 27th, 1982

Justice Glenn E. Kelley
Minnesota Supreme Court
230 State Capitol Bldg.
St. Paul, Minn. 55101

In re: Juvenile Court Rules

Dear Justice Kelley:

On November 16th,1982 the Minnesota Supreme Court will consider the important question of whether or not to adopt Rules of Procedure for the Minnesota Juvenile Courts. On November 1st, 1982 a "Minority Report to the Proposed Juvenile Court Rules" authored by Robert Scott, Assistant County Attorney, Anoka, Minnesota will be filed with the Supreme Court for consideration by each of the Justices.

Knowing your conscientious attitude (I am not being obsequious) I will not ask you to read the report - I assume you will do that.

I do, however, ask that you give favorable consideration to the Minority Report. Section I of that report recommends that a "totality of the circumstances" approach be used in determining whether or not a juvenile has waived his rights. Section II of the report recommends that any intake system which exists would be the responsibility of the prosecutor rather than that of the Juvenile Court. In my opinion, both of those positions are reasonable and thus the reason for asking you to give favorable consideration to them.

Very truly yours,

Julius E. Gernes

Julius E. Gernes
Winona County Attorney

JEG/sh

Cc to Mr. Robert Scott
Assistant County Attorney
Anoka County
Box 128
Anoka, Minn. 55303

SUPREME COURT
FILED
OCT 29 1982
JOHN McCARTHY
CLERK

10-29-- Copy distributed to each Justice.

Telephone
(612) 451-7216

Minnesota
STATE SHERIFFS' ASSOCIATION

Box 623, South St. Paul, MN 55075

October 29, 1982

A-12

The Justices of the Supreme Court
State of Minnesota
230 State Capitol
St. Paul, Minnesota 55101

Attention: Mr. John McCarthy
Clerk of the Supreme Court

RE: Proposed Rules of Procedure
for the Juvenile Court

Chief Justice Amdahl
Justices of the Supreme Court
of the State of Minnesota:

As ordered, that a hearing be had before the Supreme Court of the State of Minnesota on Tuesday, November 16, 1982 at 9:30 AM before the adoption of the Rules of Procedure for Juvenile Court, the court will hear proponents or opponents of the proposed Juvenile Rules of Procedure for the Juvenile Court. As representative of the body of the Minnesota State Sheriffs Association, I herewith request permission to be heard to present a position statement relative to the proposed rules as well as some concerns that the sheriffs of Minnesota have in this matter.

If granted opportunity to be heard, I will represent the sheriffs in opposition to proposed rules 6 and 18. I am prepared to present examples of opposition relative to the practicality of certain segments of the rules as written and proposed. It is the general concensus of our body that should these rules be adopted as written, they would have an effect and outcome which would be adverse to public interest and public safety.

If it please the Minnesota Supreme Court Justices, it is respectfully requested and encouraged that you review the "Minority Report to the Proposed Juvenile Court Rules" as prepared and submitted by the Assistant Anoka County Attorney, Mr. Robert Scott; the Minnesota sheriffs support his position in the matter.

I stand ready upon due notification to appear before the court on Nobember 16, 1982.

Respectfully submitted,

MINNESOTA STATE SHERIFFS ASSOCIATION

Holland L. Laak
Executive Director

HL:km

SUPREME COURT
FILED
OCT 29 1982
JOHN McCARTHY
CLERK

11-2 Told him to appear
10-29 -- Copy to each Justice

LAW OFFICE

Peterson, Popovich, Knutson & Flynn

PROFESSIONAL ASSOCIATION
345 CEDAR BUILDING - SUITE 800
ST. PAUL, MINNESOTA 55101
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FRED N. PETERSON, JR.
PETER S. POPOVICH
JAMES E. KNUTSON
JOSEPH E. FLYNN
PAUL W. HETLAND
ROBERT A. HUGHES
PAUL C. RATWIK
JOHN M. ROSZAK
THOMAS M. SIPKINS
THOMAS S. DEANS
PATRICIA A. MALONEY
FREDERIC W. KNAAK
FRANCES H. GRAHAM
DAVID S. BARTEL
SUSAN J. SCHOELL
PATRICK J. FLYNN

PETERSON & POPOVICH
1947 - 1952

PETERSON, POPOVICH & MARSDEN
1952 - 1960

JOHN M. MAAS, PH.D.
CONSULTANT

October 29, 1982

A-12

Mr. John C. McCarthy
Clerk of Supreme Court
State Capitol
St. Paul, Minnesota 55155

Re: Proposed Rules of Procedure for Juvenile Court
File No. A-12

Dear Mr. McCarthy:

Enclosed herewith please find ten copies of the Memorandum of the Minnesota Schools Boards Association in the above-noted matter.

The Minnesota School Boards Association requests an allotment of time at the court's hearing on November 16, 1982, for remarks concerning the proposed juvenile court rules by Mr. Peter S. Popovich.

told them to appear

Sincerely,

Susan J. Schoell

Susan J. Schoell

SJS:mcb
Encls.

11-1 - - Copy to each Justice

STATE OF MINNESOTA

IN SUPREME COURT

In Re Proposed Rules of Procedure
for Juvenile Court, File No. A-12

MEMORANDUM OF
MINNESOTA SCHOOL BOARDS ASSOCIATION

I. Introduction.

The Minnesota School Boards Association is concerned with three of the Proposed Rules of Procedure for Juvenile Courts which have particular impact on Minnesota school districts.

Proposed Rule 6, regarding a juvenile's right to remain silent. Rules 6.01 and 6.03 extend juveniles' privilege against self-incrimination to "interrogations" by "school staff personnel." In regard to application to "school staff personnel," the proposed rules are unjustified by current judicial interpretations of the Fifth Amendment. Moreover, the proposed rules would interfere significantly with the efficient functioning of the schools.

In addition, Rule 6.02 alters the test by which the validity of a juvenile's waiver is to be examined in a manner that is contrary to recent decisions of the Minnesota Supreme Court.

Proposed Rules 52 and 62, regarding out of home placement. The rules regarding court procedure in the out of home place-

ment of a child fail to refer to statutorily required notice to the child's resident and nonresident school districts.

II. Proposed Rule 6, The Right to Remain Silent.

Proposed Rule 6 requires that, in order to be admissible in court, statements made by juveniles during interrogation by "school staff personnel" be preceded by a waiver by the child of his privilege against self-incrimination. The proposed rule extends the applicability of a child's Miranda rights far beyond that mandated by existing state and federal law. As presently drafted, the proposed rule could result in significent difficulties in the maintenance of discipline in Minnesota schools.

Schools have two different interests which will be affected by the proposed rule: the ever-present need to maintain order according to internal rules and the occasional need to pursue a matter under the criminal laws. The combined effect of the proposed rule's references to "interrogation," physical restraint and "school staff personnel" would make schools virtually unable to fulfill both functions.

Proposed Rule 6.01 provides, in part:

> A confession, admission or other statement whether exculpatory or inculpatory is not admissible in court when made during an interrogation of a child who is physically restrained by a peace officer, probation officer, parole officer or school staff personnel because of an alleged delinquent or petty matter unless the child has been advised in the presence of the child's parent(s) or guard-

> ian of the child's constitutional rights. . . .

(emphasis added).

A. Warning and waiver before "interrogation" by "school staff personnel."

The three sections which follow discuss the scope of "interrogation," physical restraint of a child, and "school staff personnel." The fourth section discusses the effect on schools of the combination of these three factors in Proposed Rule 6.

1. "Interrogation."

As applied to a school setting, "interrogation" covers a broad range of activity. The United States Supreme Court has stated that:

> the term "interrogation" under Miranda refers not only to express questioning but also to any words or actions on the part of the police. . . that the police should know are reasonably likely to elicit an incriminating response from the suspect. The latter portion of this definition focuses primarily upon the perceptions of the suspect, rather than on the intent of the police.

Rhode Island v. Innis, 446 U.S 291, 301, 100 S.Ct. 1682, 1689-90 (1980) (footnotes omitted) (emphasis added). The Court went on to say:

> Any knowledge the police may have had concerning the unusual susceptibility of a defendant to a particular form of persuasion might be an important factor in determining whether the police should have known that their words or actions were reasonably likely

> to elicit an incriminating response from the suspect.

Id. at 302, 100 S.Ct. at 1690 n.8 (emphasis added). The "unusual susceptibility" of a defendant may be analogized to the susceptibility of most children to adults' authority. In Innis, the Supreme Court applied its definition of interrogation to police questioning only. However, under the proposed rules, considering the Court's focus on the susceptibilities and perceptions of the person being questioned, "interrogation" would include inquiries into what appear to be only minor infractions of school rules.

2. Physical restraint of a child.

A recent Supreme Court decision concerning the definition of police custody suggests a broad application of the proposed rule in a school setting. According to the Court, a person has been physically restrained by the police "when by means of physical force or show of authority, [the person's] freedom of movement is restrained." United States v. Mendenhall, 446 U.S. 544, 553, 100 S.Ct. 1870, 1877 (1980).

If this determination is transferred from situations involving citizens' occasional encounters with police officers to children's daily contact with school staff personnel, it can be said that children's freedom of movement is constantly "restrained" by the authority of adults as well as by compulsory attendance laws and school attendance policies.

3. "School staff personnel."

By including statements to school staff personnel among those subject to constitutional protection, the proposed

rule would extend the privilege far beyond the scope delineated by existing law. The juvenile court rules currently in effect state that a child's right to counsel and right to remain silent arise "the moment he is taken into custody by a representative of the state. . . ." Minn. JCR 2-1(1), 2-2(1) (1980). "Representative of the state" refers to persons involved primarily in administering the law, including the court, members of the court staff, probation officers, the county attorney, members of the county attorney's staff and peace officers. Minn. JCR 1-2(r) (1980).

The current rules' limitation to persons directly involved in law enforcement is in accord with interpretation by the courts. The United States Supreme Court has held that juveniles are protected by the privilege against self-incrimination in "proceedings to determine delinquency which may result in commitment to an institution in which the juvenile's freedom is curtailed. . . ." In re Gault, 387 U.S. 1, 87 S.Ct. 1428 (1967). The Minnesota Supreme Court has also limited application of the privilege to situations involving persons working within the criminal justice system. The court applied strictures on admissiblity to police investigatory activity involving juveniles in State v. Loyd, 297 Minn. 442, 212 N.W. 2d 671 (1973). In 1981, the court stated that the right to counsel, generally coextensive with the privilege against self-incrimination, does not attach during police questioning until formal adversary proceedings have been commenced. Welfare of M.A., 310 N.W. 2d 699, 701

(Minn. 1981).

Recently the Minnesota Supreme Court concluded that statements to a probation officer are protected by the privilege. State v. Murphy, No. 82-271 (Minn., filed August 31, 1982). However, the court suggested in Murphy that the privilege would not apply to all questioning by a probation officer. The court stressed that "the compulsory nature of the meeting" and the fact that the probation officer had "substantial reason to believe that the defendant's answers were likely to be incriminating" underlay the claim of privilege. Id., slip op. at 8-9.

In each case, the courts have applied the privilege only to situations involving investigation by the police or others primarily responsible for the administration of the criminal justice system.

In contrast, the proposed rule includes "school staff personnel" among those whose questions will give rise to the privilege against self-incrimination. "School staff personnel" is a designation which includes a great number of people, none of whom is trained to or primarily concerned with administering laws regarding criminal matters. The category includes all persons with some responsibility for internal school discipline: principals, assistant principals, teachers, school attendance officers, office staff, aides, custodians, kitchen staff, district administrative staff, and conceivably even chaperones at school functions. In short, "school staff personnel" may mean virtually any adult

exercising school authority.

4. Effect of requirements regarding warning before the "interrogation of a child who is physically restrained by . . . school staff personnel."

The combination of these portions of the proposed rule will make it extremely difficult for school administrators to achieve the goals of an educational institution regarding student discipline. First, schools must maintain order according to internal school rules. This is best done in an atmosphere of cooperation and harmony between students and staff. To maintain order with a minimum of conflict, school staff members must intervene in countless seemingly minor incidents involving students. In most cases, the intervention is brief, and the matter can be disposed of unobtrusively with minimum disruption of normal routine.

On the other hand, occasionally an incident may unfold to reveal aspects serious enough to warrant referral to the police for criminal action. Under the proposed rule, schools may have to choose between a less obstrusive, immediate response to disciplinary problems and a procedure to safeguard the admissiblity of statements in court.

Four examples illustrate problems created by the proposed rule. First: a school attendance officer stops children in a downtown skyway pursuant to his authority under Minn. Stat. § 120.14 "to investigate truancy [and] non-attendance at school. . . ." In some instances, truant children are also guilty of vandalism or some other delinquent or petty matter within the definition of Proposed Rule 1.01.

Under Proposed Rule 6, each time an attendance officer found a child who appeared to be truant, he could not immediately investigate the possible truancy without losing the use of any resulting statements in court. The resulting increase in time required to handle each suspected truant would render effective enforcement of compulsory attendance laws impossible.

Second: if a teacher sees students carrying laboratory equipment out of an unattended classroom, it is in the school's interest that the teacher question the students as he observes them with the equipment. In almost every case, the teacher will discover that the students have an acceptable explanation, and the incident will end. However, under the proposed rule, if theft is involved, the teacher could not inquire immediately about the students' actions without relinquishing the possible use of the students' answers in court. The alternative is the procedure prescribed by the proposed rule: no questioning until each student had waived his rights with the approval of his parent or guardian.

Third: a custodian sees two young people pushing a third around in the hall. It is clearly in the interest of the school that the custodian try to discover quickly and unobtrusively if the third student has been hurt or is in any danger. It is also in the school's interest that potential problems be dealt with as they occur, with minimum disruption of students' educational routine. However, the custodian is temporarily exercising his authority as a

member of the school staff, and his questions can be interpreted as "interrogation." Under the proposed rule, if the incident involved serious wrongdoing, statements in response to the custodian's questions would be inadmissible in court.

Fourth: a school parent chaperoning a school trip sees some students smoking on the group's school bus. The chaperone should intervene immediately. However, if the incident involves drug use or some other serious matter, the proposed rule might make responses to the chaperone's inquiries inadmissible in court.

In each of these examples, the adult involved might be viewed as "school staff personnel," and his response to the incident might be interpreted as "interrogation" of a child being restrained by the authority of the questioner and, in the second and third examples, by his presence in school. In each of these situations, educational goals are best served if school staff members respond to incidents with minimum disruption of student routine. But in each case, immediate response to the incident might jeopardize the school's interest in having serious wrongdoing handled by the courts.

The proposed rule extends the procedural protections guaranteed in the adversarial setting of a police investigation to the very different setting of a school. In so doing, the rule goes far beyond current legal interpretation of the right against self-incrimination and it poses serious problems for education.

Recommendation: "School staff personnel" should be stricken from the list of persons noted in the proposed rule. If this is not done, the language should be qualified to limit the number of persons and school situations to which the proposed rule's strictures on admissiblity will apply.

B. Presence of parents.

Rule 6.02 requires that a parent or guardian sign any waiver made by a child out of court. The validity of the waiver itself is to be considered in light of "the totality of the circumstances," including "but not limited to the child's age, maturity, intelligence, education, experience and ability to comprehend." Proposed Rule 6.02.

By requiring parental approval of a child's waiver when made out of court, the proposed rule contravenes previous decisions of the Minnesota court. In 1973, the court held:

> The determination whether a waiver of rights is voluntarily and intelligently made by a juvenile is a fact question dependent on the totality of the circumstances. . . . [P]arental presence is only one factor to consider and is not an absolute prerequisite.

State v. Hogan, 297 Minn. 430, 440, 212 N.W. 2d 664, 671 (1973). More recently, the court again rejected a per se requirement of parental presence during a juvenile's waiver, quoting the United States Supreme Court:

> "[The] totality of the circumstances approach is adequate to determine whether there has been a waiver even where interrogation of juveniles is involved. We discern no persuasive reasons

> why any other approach is required. . . . [The] approach refrains from imposing rigid restraints on police and courts in dealing with an experienced older juvenile with an extensive prior record who knowingly and intelligently waives his Fifth Amendment rights and voluntarily consents to an interrogation."

State v. Nunn, 297 N.W. 2d 752, 755 (1980), quoting Fare v. Michael, 442 U.S. 707, 725-26, 99 S.Ct. 2560, 2572 (1979). Regarding parental presence, the court said in Nunn, "[T]he fact that defendant's parents were not present . . . is only one factor which bore on the voluntariness issue." State v. Nunn at 755.

The proposed rule's requirements of parental approval of a child's out of court waiver is equivalent to the approach rejected by this court in Hogan and Nunn.

Recommendation: Parental presence should be added to the factors to be considered in the "totality of the circumstances," and the per se requirement of parental approval of the waiver should be stricken from the rule.

C. Interrogation by "school staff personnel."

In conformance with the treatment of Fifth Amendment rights in Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602 (1966), Proposed Rule 6 divides the procedure into three stages: warning (Rule 6.01), waiver (Rule 6.02) and interrogation (Rules 6.03 and 6.04).

Proposed Rule 6.03 requires for admissibility in court, that a parent or guardian be present during the interrogation of a child:

> who is physically restrained by a peace officer, probation officer, parole officer or school staff personnel because of an alleged delinquent or petty matter.

(emphasis added).

For the reasons discussed above in regard to Proposed Rule 6.01, "school staff personnel" should not be included among those whose questioning of children entails the privilege against self-incrimination.

Recommendation: "School staff personnel" should be stricken from the rule.

III. Proposed Rules 52 and 62, Placement.

Proposed Rules 52 and 62 provide, in part, for out of home placement of a child before and after hearings regarding juvenile protection matters.

Rule 52.03, Subd. 1, authorizes the court to commence a placement hearing within seventy two hours when the child has been taken into custody and not released. Rule 62.01 prescribes procedures for disposition hearings. Rule 62.03 requires reports to the court regarding recommendations for permanent out of home placement.

Each proposed rule incorporates by reference related provisions in Chapter 260. However, neither proposed rule refers to provisions in Chapter 124 relevant to out of home placements which result in removal of the child from his school district of residence.

Minn. Stat. § 124.2129, subd. 4 (Sup. 1981) provides:

> Subd. 4. State agency and court placements. If a state agency or a court of the state desires to place a child in a school district which is not the child's district of residence, that agency or court shall, prior to placement, allow the district of residence an opportunity to participate in the placement decision and notify the district of residence, the district of attendance and the commissioner of education of the placement decision. When a state agency or court determines that an immediate emergency placement is necessary and that time does not permit district participation in the placement decision or notice to the districts and the commissioner of education of the placement decision prior to the placement, the agency or court may make the decision and placement without that participation or prior notice. The agency or court shall notify the district of residence, the district of attendance and the commissioner of education of an emergency placement within 15 days of the placement.

(emphasis added).

Minn. Stat. § 124.2129, Subd. 4, should be incorporated by reference into Proposed Rules 52 and 62. At the present time, many courts ignore the requirements of § 124.2129, Subd. 4, in conducting hearings regarding out of home placements. Reference in the Rules of Juvenile Court to statutory provisions for the school district's right to notice and participation in placement decisions will increase courts' compliance with § 124.2129, Subd. 4.

Recommendation: Minn. Stat. § 124.2129, Subd. 4, should be incorporated by reference into Rules 52 and 62.

IV. Conclusion.

1. In regard to Proposed Rule 6.01, the Minnesota School Boards Association recommends that reference to "school staff personnel" be stricken and the rule amended to read, in pertinent part, as follows:

> Rule 6.01. Admissibility of Confession, Admission or Other Statement
>
> A confession, admission or other statement whether exculpatory or inculpatory is not admissible in court when made during an interrogation of a child who is physically restrained by a peace officer, probation officer, parole officer ~~and school staff personnel~~ because of an alleged delinquent petty matter. . . .

If "school staff personnel" is not stricken from Rule 6.01, the M.S.B.A. recommends that the rule be severely limited in regard to its application to school staff personnel.

2. In regard to Proposed Rule 6.02, the M.S.B.A. recommends that the rule be amended to read as follows, in part:

> The totality of the circumstances includes but is not limited to the child's age, maturity, intelligence, education, experience, ~~and~~ ability to comprehend and the presence and competence of his parents during waiver.
>
> A waiver made in court shall be on the record. A waiver made out of court shall be in writing ~~and shall be signed by the child and the child's parent(s) or guardian~~.

3. In regard to Proposed Rule 6.03, the M.S.B.A. recommends that the rule be amended to read as follows:

> Rule 6.03. Interrogation in Presence of Parent or Guardian.
>
> A confession, admission or other statement whether exculpatory or inculpatory obtained in the absence of a parent or guardian is not admissible in court if it is a product of an interrogation of a child who is physically restrained by a peace officer, probation officer, or parole officer ~~or school staff personnel~~ because of an alleged delinquent or petty matter.

4. In regard to Proposed Rule 53.03, the M.S.B.A. recommends that the rule be amended to read:

> Subd. 7. Notification of school district. If the court desires to place a child in a school district which is not the child's district of residence, notification of authorities shall be made pursuant to Minn. Stat. 124.2129, Subd. 4.

5. In regard to Proposed Rule 62.01, the M.S.B.A. recommends that the rule be amended to read as follows:

> Rule 62.01. Generally
> After a finding of dependency, neglected or neglected and in foster care or after terminating parental rights, the court may conduct a disposition hearing immediately or continue the matter for a disposition hearing at a later time.

Dispositions in regard to review of out of home placement matters shall be pursuant to Minn. Stat. 260.192~~.~~ and Minn. Stat. 124.2129, Subd. 4.

Dated: November 1, 1982.

Respectfully submitted,

PETERSON, POPOVICH, KNUTSON & FLYNN

By _____

Peter S. Popovich and
Susan J. Schoell
Attorneys for Minnesota
School Boards Association
345 Cedar Building, Suite 800
St. Paul, MN 55101
Phone: (612) 222-2811

Minnesota Chiefs of Police Association

October 25, 1982

John McCarthy
Clerk of the Supreme Court
230 State Capital
St. Paul, Minnesota 55101

A-12

Dear Mr. McCarthy:

Enclosed please find 10 copies of a cover letter and 2 resolutions adopted by the Minnesota Chiefs of Police Association.

Please place these documents before the court at the hearing to be held on November 16, 1982, at 9:30 AM, on the Proposed Rules of Procedure for Juvenile Court.

Thank you for your assistance.

Chief Daryl A. Plath
Secretary-Treasurer
Minnesota Chiefs of Police Association

DAP/sn

Enc. (1) 10 copies of cover letter

(2) 10 copies of 2 resolutions

Minnesota Chiefs of Police Association

October 21, 1982

The Justices of the Supreme Court
State of Minnesota
c/o Mr. John McCarthy
Clerk of the Supreme Court
230 State Capitol
St. Paul, Minnesota 55101

RE: PROPOSED RULES OF PROCEDURE FOR JUVENILE COURT

Dear Justices:

The Board of Directors of the Minnesota Chiefs of Police Association has passed the attached resolutions requesting that you strike Rule Six and substantially amend Rule Eighteen of the above proposed Rules of Procedure.

Sincerely,

Chief Daryl A. Plath
Secretary-Treasurer
Minnesota Chiefs of Police Association
107 West 5th Street
Hastings, Minnesota 55033

DAP/dj
Enc.

Minnesota Chiefs of Police Association

RESOLUTION

WHEREAS, Rule Six of the Proposed Rules of Procedure for Juvenile Court is inconsistent with the holdings of the United States Supreme Court and the Minnesota Supreme Court, approving the "totality of circumstances" test rather than the requirement of a parent's presence in determining the admissibility of a juvenile confession; and,

WHEREAS, Rule Six enlarges the substantive rights of a juvenile in violation of MSA 480.059, Subd. 1, which states: "Such rules shall not abridge, enlarge, or modify the substantive rights of any person"; and,

WHEREAS, Rule Six violates the legislative intent of MSA 260.155, Subd. 8, that allows juveniles 12 years of age or older to waive their rights without a parent's presence; and,

WHEREAS, Rule Six may be in violation of 2 MCAR Section 1.205, which allows the juvenile to deny his or her parents access to private data about himself or herself: and,

WHEREAS, Rule Six enlarges the scope of Miranda to cover school staff personnel and parole and probation officers when the Miranda decision was specifically held to be applicable only to police;

NOW THEREFORE BE IT RESOLVED, that the Minnesota Chiefs of Police Association hereby requests through its Board of Directors in a unanimous vote taken on October 18th, 1982. that Rule Six of the aforementioned Proposed Rules of Procedure for Juvenile Court be stricken by the Minnesota Supreme Court.

BE IT ALSO RESOLVED that the Minnesota Supreme Court Justices are hereby requested and encouraged to review the "Minority Report to the Proposed Juvenile Court Rules" as prepared and submitted by Assistant Anoka County Attorney, Mr. Robert Scott.

Respectfully submitted,

Daryl A. Plath
Secretary/Treasurer
Minnesota Chiefs of Police Association

Minnesota Chiefs of Police Association

R E S O L U T I O N

WHEREAS, Rule Eighteen of the Proposed Rules of Procedure for Juvenile Court is inconsistent with the Minnesota Rules of Criminal Procedure in that a juvenile held in detention must be released from detention after thirty-six hours unless a detention hearing has been held and the court has ordered continued detention; and,

WHEREAS, Rule Eighteen is inconsistent with the Minnesota Rules of Criminal Procedure in that a juvenile held in detention must be released within twenty-four hours if a request for a detention hearing has been made and the court does not order continued detention; and,

WHEREAS, Rule Eighteen is inconsistent with the Minnesota Rules of Criminal Procedure in that the Rule requires substantially different methods of timekeeping than are used for adult detention; and,

WHEREAS, Rule Eighteen does not take into consideration the fact that allowances must be made for Sundays and holidays; and,

WHEREAS, Rule Eighteen mandates that the hours of detention begin at the time the juvenile is actually detained instead of midnight of the day of arrest or detention as stipulated in the Minnesota Rules of Criminal Procedure;

NOW THEREFORE BE IT RESOLVED, that the Minnesota Chiefs of Police Association hereby requests through its Board of Directors in a unanimous vote taken on October 18, 1982, that Rule Eighteen of the aforementioned Proposed Rules of Procedure for Juvenile Court be stricken or substantially changed by the Minnesota Supreme Court to more closely follow the Minnesota Rules of Criminal Procedure.

Respectfully submitted,

Daryl A. Plath
Secretary-Treasurer
Minnesota Chiefs of Police Association

LAW OFFICES
BRIGGS AND MORGAN
PROFESSIONAL ASSOCIATION

2200 FIRST NATIONAL BANK BUILDING
SAINT PAUL, MINNESOTA 55101

~

2452 IDS CENTER
MINNEAPOLIS, MINNESOTA 55402

(612) 291-1215

REPLY TO Saint Paul

Mr. John C. McCarthy
Clerk
Minnesota Supreme Court
State Capitol
St. Paul, Minnesota 55101

A-12

Re: Proposed Rules of Procedure
for Juvenile Court

Dear Mr. McCarthy:

This is to confirm that we would like to make an appearance at the November 16, 1982 hearing on the proposed rules of procedure for juvenile court. My comments, which will be brief, will be on behalf of the Minnesota Association of School Administrators.

We will also be submitting prior to the hearing ten copies of a letter or brief stating our position.

Very truly yours,

Douglas L. Skor

DLS:srk

STATE OF MINNESOTA
IN SUPREME COURT

A-12

In re Proposed Rules of Procedure
for Juvenile Court

Brief of Minnesota Association
of School Administrators

Douglas L. Skor
David C. McDonald
BRIGGS AND MORGAN
2200 First National Bank Building
Saint Paul, Minnesota 55101
(612) 291-1215

Attorneys for Minnesota
Association of School
Administrators

We submit these comments on behalf of the Minnesota Association of School Administrators. Members of this professional association include the school superintendents in virtually all of Minnesota's public school districts and various central office administrative personnel in these school districts.

The Association is concerned with those portions of Rule 6 of the Proposed Rules of Procedure for Juvenile Court that relate to "school staff personnel." Under this proposal, confessions made to school personnel would be inadmissible unless a student was advised of his or her constitutional rights and voluntarily and intelligently waived the right to remain silent and the right to an attorney.

Including school staff personnel within the ambit of Rule 6 will present an extremely difficult dilemma to school districts and school administrators. School districts will either have to expend considerable money and time training their personnel to become, in effect, law enforcement officers or the judicial system will lose the benefit of the information school personnel obtain should juvenile court proceedings be necessary. While the public schools do not directly participate in the prosecution or conviction of juvenile offenders, they are concerned with a rule that would not only further increase their operating costs but also interfere with the effective enforcement of school rules and discipline. The Association also believes

that such emphasis on law enforcement may adversely affect the learning atmosphere of the school and detract from the school system's actual purpose, which of course is to educate, not prosecute children.

There are also several definitional problems that may pose difficulties for the schools. The term "school staff personnel," for example, is very broad and would apparently include all school employees, including teachers, clerical employees and custodians. Is a student "physically restrained" if he or she is stopped and questioned in the hallway? Drawing a line on situations involving physical restraint will be extremely difficult. What will constitute "reasonable efforts" in locating the student's parent or guardian, and what is a "reasonable time" to wait before seeking another adult to be present when questioning a student? Who is a "near relative" or "a responsible adult interested in the welfare of the child"? Are there certain school personnel, such as counselors, who are responsible adults interested in the welfare of the child? If there are such personnel, what happens if such a person is the interrogating party? These questions may not be particularly troublesome for law enforcement officers, but they will unduly complicate and impede the operation of the public schools.

For the above reasons, the Association opposes the inclusion of "school staff personnel" in proposed Rule 6. Unless the Court finds compelling reasons for adopting the rule as proposed, we request that the references to "school staff personnel" be deleted.

Dated: November 12, 1982.

Respectfully submitted,

BRIGGS AND MORGAN

By David C. McDonald

Douglas L. Skor
David C. McDonald
2200 First National Bank Building
Saint Paul, Minnesota 55101
(612) 291-1215

Attorneys for the Minnesota
Association of School
Administrators

TO: Chief Justice Amdahl and Associate Justices

FROM: George M. Scott

DATE: November 15, 1982

RE: Hearing on Rules of Procedure for Juvenile Court
Tuesday, November 16, 1982, 9:30 a.m.

I would suggest the following order of presentation by those who wish to be heard:

1. Presentation of the Supreme Court Juvenile Justice Study Commission Report by:

   A. Terrance Hanold, Commission chairperson

   B. Maynard E. Pirsig, Commission member*

2. Other members of the Commission and Task Force who wish to be heard:

   A. Hon. George O. Peterson, Ramsey County Juvenile Court

   B. Hon. Allen Oleisky, Hennepin County Juvenile Court

   C. Hon. Robert W. Johnson, Anoka County Attorney

   D. Rob Scott, Assistant Anoka County Attorney

   E. Ned Crosby (lay member), president, The Center for New Democratic Processes

   F. Jay G. Lindgren (lay member), Minnesota Department of Corrections

3. Thomas A. McGrath of St. Paul has filed an amicus brief and has received permission from you to introduce three students: Hank Byrd, Mike Triplett, and Lynn Shomion

4. Barry C. Feld, professor, University of Minnesota Law School

5. Educational Field:

   A. Susan J. Schoell, Peterson, Popovich, Knutson & Flynn, attorneys for Minnesota School Boards Association

---

* Maynard Pirsig would like to take a half-hour in presenting the majority report, and I feel we should show the courtesy to other members of the committee who have worked very hard on this matter if they wish to take more time than we will afford others because of the time constraints. In order to hear all who wish to speak and conclude our hearing in one day, I would suggest that we limit others to 15 minutes, with the possibility of suggesting that certain groups divide their 15-minute time slots.

B. Gary J. Green, general counsel, Minnesota Education Association

C. Roger J. Aronson, Bonner Law Offices, representing Minnesota Association of Secondary School Principals (also Thomas Wilson)

D. Douglas L. Skor, Minnesota Association of School Administrators (David C. McDonald, Briggs and Morgan)

6. Representatives of the Bar Associations:

A. Gail S. Baez, chairperson, Juvenile Law Subcommittee, Criminal Law Section, State Bar Association

B. Nancy Zalusky Berg, co-chair, Young Lawyers Section, Child Abuse Committee, State Bar Association

C. Cort C. Holten, chairman, Legislative Subcommittee, Criminal Law Section, State Bar Association

D. Wright S. Walling, co-chair, Juvenile Law Committee, Hennepin County Bar Association

7. Law Enforcement Representatives:

A. Gerald R. Kittridge, executive director, Minnesota Police and Peace Officers Association

B. Holland L. Laak, executive director, Minnesota State Sheriffs Association

C. William W. McCutcheon, Chief of Police, City of St. Paul

D. Deputy Chief Bernard Jablonski and Captain Wayne Hartley, commander of the Juvenile Division, Minneapolis Police Department, representing Chief Anthony Bouza

E. Kathleen Gearin, representing Ramsey County Chiefs of Police Association

F. Greg Kindle, president, Ramsey County Juvenile Officers Association

G. Dennis H. Smith, Hennepin County Juvenile Officers Committee

H. Bill Hanvik, Hennepin County Juvenile Officers Association

8. Kenneth Young, director, Department of Court Services, Hennepin County

9. Public Defenders:

A. Susan K. Maki, Assistant State Public Defender, representing C. Paul Jones

B. Lane Ayers, Chief Public Defender, Hennepin County, representing William R. Kennedy

10. County Attorneys:

A. County Attorneys Association, represented by Allen L. Mitchell, St. Louis County Attorney; Joanne Vavrosky, Assistant St. Louis County Attorney; and Gregory E. Korstad, Isanti County Attorney, all repesenting the president of the Minnesota County Attorneys Association, Steven Rathke

B. Hennepin County Attorney's Office, Toni A. Beitz, supervisor, Juvenile Section, and William Hershleder, Assistant County Attorney, both representing Thomas Johnson, Hennepin County Attorney

11. Others (inquire as to whether anyone else wishes to be heard)

12. Response by Commission

Office of
ANOKA COUNTY ATTORNEY

ROBERT W. JOHNSON

Courthouse - Anoka, Minnesota 55303 *612-421-4760*

November 1, 1982

Justices of the Supreme Court
c/o Mr. John McCarthy
Clerk, Minnesota Supreme Court

Dear Mr. McCarthy:

Please be advised that I wish to be heard at the hearing scheduled for November 16, 1982, at 9:30 o'clock A.M., concerning the Proposed Rules of Procedure for Juvenile Court.

With this letter is also filed a Petition, also known as "Minority Report Concerning the Proposed Juvenile Court Rules" or "Working Position Paper Concerning the Proposed Juvenile Court Rules." This document sets forth my position and the position of the co-endorsers concerning changes requested in the proposed rules.

I wish to further indicate to the Justices my agreement with Professor Feld that Rule 24.01, Subd. 1(f), which requires the county attorney to disclose exculpatory information that tends to reduce the possibility of the petition being proved or the child adjudicated delinquent, may be interpreted as going far beyond current case law or the parallel responsibility of the prosecutor in the adult system. It is my understanding, having been a member of the drafting committee, that we wanted a rule in conformance with case law and that required the same degree of responsibility upon the prosecutor as is required in the adult system, but without using the adult term of guilt. For clarity of understanding and ease of interpretation it appears appropriate to amend the rule by inserting wording similar to Rule 9.01, Subd. 1(6) of the Rules of Criminal Procedure.

Rule 20.02 contains no provision as to what should happen when a child is not arraigned within twenty days. The reasons for a child not being arraigned within twenty days may be varied and responsibility for the delay may rest on the child (on run, wants a particular attorney), the court (backlog), or the prosecutor. I suggest an addition to Rule 22.02 similar to that found in Rule 27.02, Subd. 2.

Finally, the requested rule change for Rule 34.02, Subd. 2 may be too limited when considered in light of M.S. 260.161, Subd. 1, and the need for the prosecutor, defense attorney and the adult sentencing court to know the prior juvenile history of an adult defendant. Amending the proposed change to allow the county attorney access without motion to the juvenile records until the juvenile is 23 years of age appears proper.

Very truly yours,

Robert H. Scott

Robert H. Scott
Assistant County Attorney

SUPREME COURT
FILED
NOV 1 1982

JOHN McCARTHY
CLERK

RHS:rw

Enclosure

PETITION

(Also Known As)

MINORITY REPORT CONCERNING
THE PROPOSED JUVENILE COURT RULES

or

WORKING POSITION PAPER CONCERNING
THE PROPOSED JUVENILE COURT RULES

By: Robert Scott
Assistant Anoka County Attorney
Court House
325 Main Street
Anoka, Minnesota 55303

I AGREE WITH AND ENDORSE THIS PETITION

James Hetland, Esq.
Vice President, First Bank of Minneapolis
Chairman, Special Task Force on Rules of Procedure

The Honorable George O. Petersen
Judge, Ramsey County Juvenile Court
Member, Special Task Force on Rules of Procedure
Member, Drafting Committee on Rules

The Honorable Allen Oleisky
Judge, Hennepin County Juvenile Court
Member, Special Task Force on Rules of Procedure
Member, Drafting Committee on Rules

Robert H. Scott,Esq.
Assistant Anoka County Attorney
Member, Special Task Force on Rules of Procedure
Member, Drafting Committee on Rules

Captain John Sturner
St. Paul Police Department
Member, Special Task Force on Rules of Procedure

I AGREE WITH AND ENDORSE THIS PETITION

The Honorable Lindsay G. Arthur
Judge, Hennepin County District Court
Past Judge, Hennepin County Juvenile Court

Robert W. Johnson, Esq.
Anoka County Attorney
Member, Supreme Court Juvenile Justice Study Commission

Barry C. Feld, Esq.
Professor of Law
University of Minnesota Law School

Stephen C. Rathke, Esq.
On Behalf of the County Attorney's Association
Crow Wing County Attorney
President, County Attorney's Association

Richard A. Tracy, Esq.
On Behalf of the Criminal Law Section of the
Minnesota State Bar Association
Chairman, Criminal Law Section of the
Minnesota State Bar Association

I AGREE WITH AND ENDORSE THIS PETITION

Thomas L. Johnson, Esq.
Hennepin County Attorney

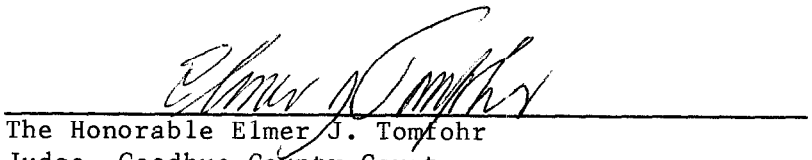
Tom Foley, Esq.
Ramsey County Attorney

The Honorable Spencer J. Sokolowski
Chief Judge Tenth Judicial District
Judge, Anoka County Juvenile Court

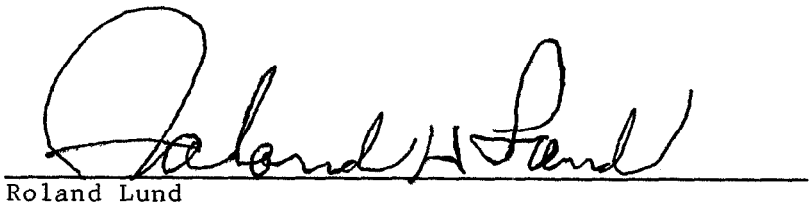
The Honorable James D. Gibbs
Judge, Anoka County Court
Past Public Defender, Anoka County Court

The Honorable Lynn C. Olson
Judge, Anoka County Court

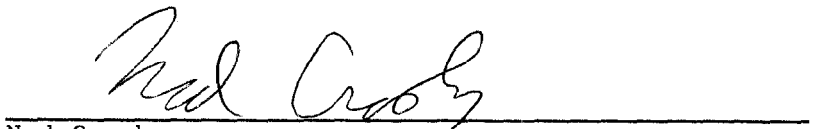
I AGREE WITH AND ENDORSE THE REQUESTED CHANGES TO THE FOLLOWING PROPOSED RULES IN THIS PETITION:



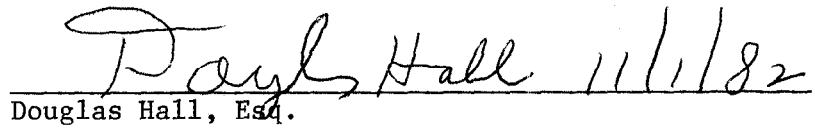
The Honorable Elmer J. Tomfohr
Judge, Goodhue County Court
Member, Supreme Court Juvenile Justice Study Commission
Member, Special Task Force on Rules of Procedure
Member, Drafting Committee on Rules
Rule 18.09 Only



Roland Lund
Director, Court Services Mid State Probation Office
Member, Special Task Force on Rules of Procedure
Rules: 2.02; 17; 18.09; 20.02; 24.01, Subd. 1;
24.02, Subd. 1; 30.03, Subd. 5; 32.05,
Subd. 2; 34.02, Subd. 2(c); 38.02;
54.02; 64.02, Subd. 2(c).

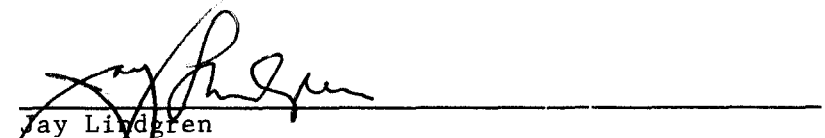


Ned Crosby
President, Center for New Democratic Processes
Member, Supreme Court Juvenile Justice Study Commission
Member, Special Task Force on Rules of Procedure
Rules (Section I) 5, 6, 15, 21, 22 and 41

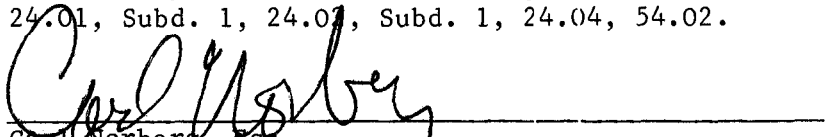


Douglas Hall, Esq.
Director, Legal Rights Center
Member, Supreme Court Juvenile Justice Study Commission
Member, Special Task Force on Rules of Procedure
Member, Drafting Committee on Rules
Rules: 5, 21 and 41
(I strongly support a totality of circumstances approach to the appointment of a guardian ad litem and therefore agree to the requested changes for Rules 5 and 41.)

I AGREE WITH AND ENDORSE THE REQUESTED CHANGES TO THE FOLLOWING PROPOSED RULES:



Jay Lindgren
Executive Officer - Juvenile Releases
Member, Supreme Court Juvenile Justice Study Commission
On his own behalf, and
On behalf of the Commissioner of Corrections
Rules: 2.02, 5, 17, 22, 34.02, Subd. 2(c), 38.02, 41, 64.02, Subd. 2(c)
Agree with the requested changes in the following rules but only for children 16 years of age or older: 6, 15, 21.
Offer no opinion on the following rules: 20.02, Subd. 2, 24.01, Subd. 1, 24.03, Subd. 1, 24.04, 54.02.



Carl Norberg, Esq.
Member, Special Task Force on Rules of Procedure
Section I - Rules 5 and 11, all of Section II and Section III
I further agree with the requested changes in the following rules but only for children 16 years of age or older:
Section I - Rules 6,15,21

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OVERVIEW

This brief is divided into four sections. The first three sections argue for amendments to specific proposed rules. Section IV restates those proposed rules to which revisions are sought showing the language that must be added and deleted.

Section I - Totality of the Circumstances

Section I concerns Proposed Rules 5, 6, 15, 21, 22 and 41, and argues for a totality of the circumstances test to determine the validity of a juvenile's voluntary and intelligent waiver of the rights contained in those rules. Much focus is placed on Rule 6, The Right to Remain Silent, which passed the Task Force by the closest vote of any rule. Rules 5, 15 (except that part incorporating Rule 6), 21, 22 and 41 were approved by the Task Force and had as their basic philosophical underpinning a totality of the circumstances test. The Commission then changed the rules, gutting from them the totality of the circumstances test, and inserting new law which has the practical effect of removing, sometimes in whole and sometimes in part, a juvenile's right from the juvenile and placing it with an adult. Section I argues for a return to the totality of the circumstances test for the rules because such a position is in conformance, where applicable, with case law of the Minnesota and United States Supreme Courts and with Minnesota Statutes, is practical and administratively workable, and better serves the interests of juveniles.

Section II - Intake

Section II argues that Proposed Rule 17 concerning intake should be stricken. The vague, incomplete rule added by the Commission after

being defeated by the Task Force placed the function of screening cases for court with the court. Such a practice, if adopted, creates a direct conflict between the functions of the judicial branch and the executive branch. Further, the rule allows the court direct and indirect involvement in cases before charging, which creates the appearance of a conflict of interest and could create an actual conflict of interest for the judge.

Section III

Section III concerns several proposed rules, unrelated to each other, but which should be revised to make a more fair court system with a reasonable balance of the rights of the juvenile and the resources and safety of the public. Proposed Rule 18.09, for example, was added by the Commission and would result in Saturday and Sunday court sessions, which are tremendously costly and impractical. Proposed Rule 30.03, Subd. 5, if amended, would require disposition reports to be reviewed only with those parents who request such a review instead of with all parents regardless of their availability or apathy. Proposed Rule 34 is requested to be amended. The proposed rule will work a hardship upon the county attorney in obtaining necessary information to determine the most appropriate way in which to handle a matter being considered for action in the court or actually before the court.

Section IV

Section IV, as indicated above, is a restatement of those parts of the proposed rules to which revisions are sought.

SECTION I

The most serious flaw of the proposed Rules of Procedure for Minnesota Juvenile Courts is the rejection by Rules 5, 6, 15, 21, 22, and 41 of the right of the juvenile to proceed as an individual party in the court process and to waive specified rights pursuant to a totality of the circumstances test. These rules also deny the juvenile certain rights by placing the decision-making power in another. Some of these rules grant rights to juveniles only when accompanied by a parent or guardian and, without reason, deny those same rights to a juvenile accompanied only by a guardian ad litem.

This report requests the adoption of a totality of the circumstances test for the above-stated rules. Such a test conforms to statute, caselaw, and the remainder of the proposed rules. Also, such a test is practical to administer and in the interest of juveniles.

The discussion below details by individual rule the objections to that rule and proposes the necessary changes to bring the rule in conformance with a totality of the circumstances test. Please see the index for the actual wording change recommended for each rule.

Rule 6: Right to Remain Silent

Rule 6 should be stricken. It should be stricken because:

A. The rule is inconsistent with the holdings of the United States Supreme Court and the Minnesota Supreme Court approving the totality of the circumstances test rather than the requirement of a parent's presence in determining the admissibility of a juvenile confession. (See Fare v. Michael C., 442 U.S. 707, 99 S. Ct. 2560 (1979), State v. Hogan, 212 N.W.2d 664 (Minn. 1973), In the Matter of the Welfare of S.W.T., 227 N.W.2d 507 (Minn. 1974), State v. Nunn, 297 N.W.2d (Minn. 1980), and In the Matter of the Welfare of M.A., 310 N.W.2d 699 (Minn. 1981).)

B. The rule is a rule of evidence and therefore must be promulgated pursuant to Minnesota Statute 480.0591 (Rules of Evidence) rather than pursuant to Minnesota Statute 480.0595 (Juvenile Court Rules).

C. The rule enlarges the substantive rights of a juvenile in violation of Minnesota Statute 480.059, Subd. 1, which states: "Such rules shall not abridge, enlarge, or modify the substantive rights of any person."

D. The rule is impractical because the factor of a parent's presence or notification of a parent will, in practice, become the only factor of significance in determining admissibility of the juvenile's statement.

E. The rule allows only the absolute sanction of inadmissibility without consideration to admissibility of the confession, admission, or other statement for impeachment, or for any of the other exceptions now recognized in the introduction of such statements in adult cases and, presently, in juvenile cases.

F. The rule violates the legislative intent that allows juveniles 12 years of age and older to waive their rights without a parent's consent or presence (Minnesota Statute 260.155, Subd. 8).

G. The rule creates the necessity of a parent's consent in certain circumstances before the waiver of the juvenile is effective. The court by rule mandates that a person's right (the juvenile's right to waive his or her right to remain silent) be controlled by another, the parent, guardian, or responsible adult.

H. The rule may be in violation of 2 MCAR Section 1.205 which allows the juvenile to deny his or her parents access to private data about himself or herself.

I. The rule enlarges the scope of Miranda to cover school staff personnel and parole and probation officers when the Miranda decision was specifically held to be applicable only to police.

J. The rule, as written, will create a plethora of litigation to define such phrases as "physically restraining" and "school staff personnel" as well as clarifying inconsistencies of wording in the rule.

K. The rule will be costly to administer, further adversarial litigation in juvenile court, and create administrative and education problems for both the police and education personnel.

Rule 6 is Inconsistent with Current Case Law

Case law, by both the Minnesota Supreme Court and the United States Supreme Court, supports the position that a totality of the circumstances test be applied to determine the validity of a juvenile's waiver of his right to remain silent and the voluntariness of his statement.

As early as 1974 in State v. Hogan, 212 N.W.2d 664 at 671 (Minn. 1973), the Minnesota Supreme Court laid down the rule:

> "We hold that the determination whether a waiver of rights is voluntary and intelligently made by a juvenile is a fact question dependent upon the totality of the circumstances. The child's age, maturity, intelligence, education, experience, and ability to comprehend are all factors to be considered in addition to the presence and competence of his parents during waiver."

In State v. Hogan, supra at 671 the juvenile's parents were not present during questioning and the court said:

> " . . . we reject the absolute rule that every minor is incapable and incompetent as a matter of law to waive his constitutional rights. In determining whether a juvenile has voluntarily and intelligently waived his constitutional rights, parental presence is only one factor to consider and is not an absolute prerequisite."

The court found basis for its decision from In re Gault, 387 U.S. 1, 5587 S. Ct. 1428, 18 L. Ed. 2d 527 (1967), which it noted "indicates that while waiver of privileges by children may differ some in technique, it does not differ in principle from waiver by adults."

The Minnesota Supreme Court has remained firm in its test of totality of the circumstances since its holding in State v. Hogan. In the Matter of the Welfare of S.W.T., 227 N.W.2d 507 (Minn. 1974), the court noted that the majority of states, including Minnesota, hold that the validity of a juvenile's waiver is an issue of fact, and then the court quoted its totality of the circumstances test stated above in State v. Hogan.

In State v. Nunn, 297 N.W.2d 752 (Minn. 1980), with Chief Justice Sheran writing for a unanimous court (Judges Amdahl and Simmonett taking no part in the decision), the court reaffirmed the totality of the circumstances test and found that a parent's presence is but one factor which bears on the issue of the voluntariness and admissibility of the statement. Thus, the court has accepted the totality of the circumstances test for determining voluntariness of a statement and validity of the waiver.

As recently as In the Matter of the Welfare of M.A., 310 N.W.2d 699 (1981), the Minnesota Supreme Court used the totality of the circumstances test in determining the voluntariness of a juvenile's confession.

The Minnesota rule of totality of the circumstances is well grounded in case law set down by the United States Supreme Court. In Haley v. Ohio, 332 U.S. 596, 68 S. Ct. 302, 92 L. Ed. 224 (1948), and in Gallegas v. Colorado, 370 U.S. 49, 82 S. Ct. 1209, 8 L. Ed. 325 (1962), the court used a totality of the circumstances approach to determine the admissibility of a juvenile's confession. Then in Fare v. Michael C., 442 U.S. 707 at 724-725, 99 S. Ct. 2560 (1979), the court formally adopted the totality of the circumstances test for a juvenile.

> "Thus, the determination whether statements obtained during custodial interrogation are admissible against the accused is to be made upon inquiry into the totality of the circumstances surrounding the interrogation, to ascertain whether the accused in fact knowingly and voluntarily decided to forego his rights to remain silent and to have the assistance of counsel."

The United States Supreme Court continued in Fare v. Michael C., supra at 725-726, in language quoted by the Minnesota Supreme Court in State v. Nunn, supra, to state why this approach is the best way to resolve the issue:

> "This totality of the circumstances approach is adequate to determine whether there has been a waiver even where interrogation of juveniles is involved. We discern no persuasive reasons why any other approach is required where the question is whether a juvenile has waived his rights, as opposed to whether an adult has done so. The totality approach permits--indeed, it mandates--inquiry into all the circumstances surrounding the interrogation. This includes evaluation of the juvenile's age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights.
>
> "Courts repeatedly must deal with these issues of waiver with regard to a broad variety of constitutional rights. There is no reason to assume that such courts--especally juvenile courts with their special expertise in this area--will be unable to apply the totality of the circumstances analysis so as to take into account those special concerns that are present when young persons, often with limited experience in education and with immature judgment, are involved. Where the age and experience of a juvenile indicates that his request for his probation officer or his parents is, in fact, an invocation of his right to remain silent, the totality approach will allow the court the necessary flexibility to take this into account in making a waiver determination. At the same time, that approach refrains from imposing rigid restraints on police and courts in dealing with an experienced older juvenile with an extensive prior record who knowingly and intelligently waives his Fifth Amendment rights and voluntarily consents to interrogation."

Rule 6 is a Rule of Evidence

Rule 6 is drafted as a rule of evidence requiring the inadmissibility of a confession, admission, or other statement by a juvenile unless certain conditions are met. Minnesota Statute 480.0591 provides the authority for the court's promulgation of rules of evidence. Rule 6 is drafted under the authority of Minnesota Statute 480.0595 (Juvenile Court Rules), which in turn derives its authority, in part, from Minnesota Statute 480.059 (Criminal Rules). Neither Minnesota Statute 480.0595 nor 480.059 grant authority for promulgation of rules of evidence, but only have authority to promulgate

rules relating to pleadings, practice, procedure, and forms. Only Minnesota Statute 480.0591 relates to promulgation of rules of evidence. Therefore, any new rules of evidence must be presented to the court through the process established pursuant to Minnesota Statute 480.0591.

Rule 6 is Beyond the Authority of Juvenile Court Rules

Minnesota Statute 480.0595 grants authority to the Minnesota Supreme Court to promulgate rules to regulate the pleadings, practice, procedure, and forms in juvenile proceedings in all juvenile courts of the state in accordance with the provisions of Section 480.059, except with respect to the composition of the advisory committee.

Minnesota Statute 480.059 grants authority to the Minnesota Supreme Court to promulgate rules to regulate the pleadings, practice, procedure, and forms of criminal actions. Minnesota Statute 480.059, Subd. 1, states: "Such rules shall not abridge, enlarge, or modify the substantive rights of any person." The constitutional right to remain silent is a substantive right, and the conditions imposed by rule of parent notification, parent presence, and parent consent all enlarge or modify this constitutional right in violation of statute.

Because the authority of the juvenile court rules derives its statutory base from the same statute promulgating the adult criminal rules, the latter rules become a good guideline to determine what should be within the scope of the juvenile court rules. No rule of the Rules of Criminal Procedure control the taking of a statement of a defendant by another individual and neither should the juvenile court rules.

Absolute Requirement of Parental Presence Creates an Inpractical Rule

The use of the totality of the circumstances test is practical and will benefit many juveniles by requiring a thorough review of the facts under which a statement was given.

The absolute requirement of a parent's, guardian's, or responsible adult's presence at the taking of a statement results in a checklist or formula approach to the admissibility of that statement. The presence of a parent, guardian, responsible adult, or even an attorney may not assist the juvenile in making an intelligent and voluntary waiver of his right to remain silent. It is widely known that juveniles confess more readily than adults. Parents often are the reason for the confession. Some parents have been known to physically accost their child in front of the police in order to obtain a confession. Other times a parent will ask police to leave them alone with a reluctant juvenile and several minutes later the police are called back and a confession is given. By far the most typical action by a parent is to give his or her child the advice and the order "to tell the truth." However, in court the basic approach to determining whether or not to contest the admissibility of a statement or, if contested, to allow the statement in as evidence is to determine if a parent was present. A parent's presence, in practical effect, becomes an irrebuttable presumption to admissibility.

Compare the number of appeals between adult and juvenile cases over the issue of confession admissibility. In the past ten years there have been countless number of adult cases, but only six Minnesota Supreme Court cases and one United States Supreme Court case discussed the issue of a juvenile's statement. Of these seven juvenile cases, only In the Matter of the Welfare of S.W.T., supra, concerned admissibility of a statement despite a parent being present.

Parent's presence as an absolute requirement to admissibility creates a formula or checklist that curtails further investigation into all the facts surrounding the statement. As the United States Supreme Court said in Haley v. Ohio, supra at 304:

> "Moreover, we cannot give any weight to recitals which merely formalize constitutional requirements. Formulas of any respect for constitutional safeguards cannot prevail over the facts of life which contradict them."

Rule 6 is Inconsistent with the Intent of Minnesota Statute 260.155, Subd. 8

Minnesota Statute 260.155, Subd. 8, mandates that any waiver by a juvenile 12 years of age or older of a right which the juvenile has under Chapter 260 must be an express waiver intelligently made by the juvenile after the juvenile has been fully and effectively informed of the right being waived. Clearly, the legislature intends that in juvenile proceedings the juvenile can exclusively exercise or waive his rights.

In other areas the legislature has adopted age levels of less than 18 at which a juvenile may be treated like an adult.

A. Medical - Minnesota Statute 144.342 to 144.345

> Consent may be given by a minor of any age to emergency treatment, or medical, mental, and other health services to determine the presence of or to treat pregnancy and conditions associated therewith, venereal disease, alcohol, or other drug abuse.

B. Service of Summons - Minnesota Statute 260.141, Subd. 1(a)

> Personal service of all juvenile court delinquency matters must be made on the juvenile and in non-delinquency matters personal service must be made on the juvenile if he or she is more than 12 years of age. This service is in addition to the service on the parent.

C. Reference for Prosecution - Minnesota Statute 260.125

> A juvenile 14 years of age or older at the time of a delinquent act may be tried as an adult.

D. Driver's License - Minnesota Statute 171.041, 171.042, 171.05

In some special instances, for farm work or personal or family medical reasons, a 15-year-old juvenile can obtain a driver's license. A 15-year-old can also obtain an instruction permit.

E. Appointment of Guardian for a Minor - Minnesota Statute 525.6175

A minor 14 years of age or older may nominate his or her own guardian.

F. Employment of Minors - Chapter 181A

Minors are allowed employment except under certain conditions dependent upon age.

In addition to the legislative actions, more and more juveniles are emancipating themselves and living independent of their families. This is especially so in the metropolitan area. The welfare assistance programs have taken this trend into consideration by allowing the distribution of welfare assistance, A.F.D.C., and medical assistance without contact or consent from the juvenile applicant's parents.

Again, the totality of the circumstances test provides the flexibility to decide each case on the juvenile's ability to knowingly and intelligently waive the right to remain silent and to voluntarily give a statement rather than relying on arbitrary conditions created by an arbitrary age level.

Rule 6 Limits a Right Belonging to a Juvenile

If a juvenile possesses a right to remain silent, then it certainly appears logical that a juvenile has the right to waive the right to remain silent. Rule 6, however, conditions the juvenile's right to waive upon either a parent's or guardian's notification or consent, or both. Such a limitation on the right to waive in effect removes control of the right from the juvenile which in itself could be considered a violation of the juvenile's rights. See State v. Hogan, supra at 671, in which it states: "In determining whether a juvenile has voluntarily and intelligently waived his

constitutional rights, parental presence is only one factor to consider and is not an absolute prerequisite." (Underlining added.)

Rule 6 May Violate the Regulations Promulgated Under the Data Privacy Act

Regulations for the Data Privacy Act are set out by 2 MCAR Section 1.205 pursuant to Minnesota Statute 15.162, Subd. 4 and Subd. 5(a), and Minnesota Statute 15.163. According to 2 MCAR Section 1.205C(1)(a), the Responsible Authority, as defined by 2 MCAR, Section 1.202K, shall provide the juvenile from whom it collects private or confidential data with a notification that the juvenile has the right to request that his parents' access to the private data be denied. A confession is private data pursuant to Minnesota Chapter 15 and Minnesota Statute 260.161.

Rule 6 Does Not Consider the Many Exceptions Made to the Miranda Rule

Rule 6 is an absolute sanction on admissibility of any confession, admission, or statement not taken in conformance with the rule. However, many exceptions have been made to the Miranda decision since its holding. These same exceptions will have to be re-litigated for Rule 6 and include:

A. Whether "made during an interrogation" includes:

1. Voluntary spontaneous statements,
2. Statements not in response to a question,
3. Threshold and clarifying questions,
4. Booking questions, and
5. Emergency questions.

B. Whether statements excluded in the State's case-in-chief can be used for impeachment. (See N.Y. v. Harris, 91 S. Ct. 693 (1971), and In re Larson's Welfare, 254 N.W.2d 388 (1977).)

C. Whether the doctrine of fruit of the poisonous tree will apply.

D. Whether the doctrine of purging the taint will apply.

E. Whether the good faith exception applies. (See U.S. v. Williams, 622 F.2d 830 (5th Circuit 1980).)

F. Whether the rule will apply when the constitutional right no longer applies after:

1. A finding of the petition being proved or an adjudication of delinquency, or

2. A grant of immunity.

G. Whether the rule will apply to protect an individual from a charge of purjury.

Rule 6 Leaves Key Phrases Undefined

The rule fails to define such key terms as "physically restrained" and "school staff personnel."

Is being physically restrained the same as being in custody? Is a juvenile physically restrained when asked to sit in the principal's office or the backseat of a squad car, or must the juvenile be physically touched?

Who is included in school staff personnel?—the principal, teacher, maintainance man, school secretary? Must the school staff personnel be acting in the course of his or her duties? Must the juvenile be enrolled in the school of the school staff personnel? Would this rule apply to the professor at the University of Minnesota who catches a 15-year-old junior high student going through his desk and the professor, blocking the doorway, asks, "What are you doing?"

The Waiver Provisions of Rule 6 are Unclear

Rule 6.02 allows a waiver of the right to remain silent, but the writing of the rule in the present tense makes it appear that the juvenile must in court also waive the right to an attorney.

Rule 6.03 absolutely requires parental or guardian presence during the questioning, and Rule 6.02 requires a written waiver by the parents or guardian. Rule 6.04 then sets out when questioning of the juvenile can be done outside the presence of the parent or guardian. Rule 6.04 only implies, but does not state, that it is an exception to the requirements of Rule 6.02 and 6.03.

Rule 6 Will be Costly to Administer

The rule requires school staff personnel to administer the Miranda Warning. In addition, school staff personnel will need to give parents notification and, in certain situations, have a parent present to obtain an admissible statement from a juvenile. Just the added cost of educating the individuals involved in the new requirements will be tremendous. Plus, there will be the additional cost of carrying out the requirements of the rule.

Other administrative issues are certain to arise. The need to have parents notified and/or present will require the taking of more juveniles into detention. Awaiting notification of parents and their presence will require a place for detention and, presumably, a limitation on the length of detention. Further, a determination will have to be made as to whether parents can include a non-custodial parent, what to do if the parent is the victim of the offense or appears to be coercing a statement, and how to determine who is a responsibile adult.

Conclusion

Because of the above reasons, Rule 6 should be stricken. The striking of the rule continues the determination of the admissibility of a juvenile's confession, admission, or other statement by the totality of the circumstances which is not only a better rule, but one that has been adopted by the Minnesota Supreme Court and the United States Supreme Court.

Rule 5: Guardian ad Litem and Rule 41: Guardian ad Litem

Rules 5 and 41 should be amended to conform to Minnesota Statute 260.155, Subd. 4(a) and (b).[1]

The rules proposed by the Commission[2] require at least a parent, guardian, or guardian ad litem to accompany the juvenile at every stage of the proceedings. The rule proposed by this report follows Minnesota law which requires at least a parent, guardian, guardian ad litem, or counsel to accompany the juvenile at every stage of the proceedings.

Minnesota Statute 260.155, Subd. 4(b), allows the juvenile to proceed without a parent, guardian, or the appointment of a guardian ad litem when the juvenile is without parent or guardian, or the parent is a minor or incompetent, or the parent or guardian is indifferent to or hostile to the juvenile's interests provided that:

A. Counsel has been appointed for the juvenile or otherwise retained, and

B. The court is satisfied that the interests of the juvenile are protected.

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1. M.S. 260.155, Subd. 4, states: "(a) The court shall appoint a guardian ad litem to protect the interests of the minor when it appears, at any state of the proceedings, that the minor is without a parent or guardian, or that his parent is a minor or incompetent, or that his parent or guardian is indifferent or hostile to the minor's interests, and in every proceeding alleging neglect or dependency. In any other case the court may appoint a guardian ad litem to protect the interests of the minor when the court feels that such an appointment is desirable. The court shall appoint the guardian ad litem on its own motion or in the manner provided for the appointment of a guardian ad litem in the district court. (b) The court may waive the appointment of a guardian ad litem pursuant to clause (a), whenever counsel has been appointed pursuant to subdivision 2 or is retained otherwise, and the court is satisfied that the interests of the minor are protected."

2. Supreme Court Juvenile Justice Study Commission.

This substantive statute was adopted by the Task Force[3] in the writing of the proposed rules, but the Commission amended Rules 5 and 41 by striking that part of each rule which included Minnesota Statute 260.155, Subd. 4(b).

The statute and the Task Force offer a philosophy that is practical, in the interest of the juvenile, lawful, and based on the totality of the circumstances.

The legal basis of the rule proposed by this report and adopted by the Task Force, as stated above, is found in Minnesota Statute 260.155, Subd. 4.

The court, in exercising its discretion on whether a juvenile can proceed without parent, guardian, or guardian ad litem, must find that the juvenile has retained or been appointed counsel, and must further find that the interests of the minor are protected. In making this latter determination the court looks at the totality of the circumstances. It is important to note that the statute requires more than just counsel for the child. The interests of the juvenile that the court considers must be more than just the legal interests of the juvenile.

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3. Approved March 10, 1982, the Task Force was appointed to prepare proposed rules and report to the Supreme Court Juvenile Justice Study Commission. The Task Force, after several meetings, assigned the responsibility of drafting proposed rules to a Drafting Committee, which then reported to the Task Force. The Drafting Committee was composed of three judges, three attorneys, and one reporter for the Supreme Court Juvenile Justice Study Commission who also was an attorney. The Task Force included all the members of the Drafting Committee and had a total of eight attorneys, including judges and four persons not attorneys. The Supreme Court Juvenile Justice Study Commission had only six members who were also on the Task Force. The Commission had only two attorneys and two judges who were actively practicing in juvenile courts, and each was on the Task Force.

The statute and Task Force, through a totality of the circumstances test approach, recognize that an increasing number of juveniles live in independent living situations and are sufficiently mature to make reasonable judgments with the assistance of counsel. Other statutes even allow juveniles adult-like decision-making authority or responsibility without the assistance of counsel or other adults (see page 9 of this report).

Courts throughout the state, but especially in Hennepin and Ramsey Counties where the statute is vitally important to the functioning of the court, have relied on the statute. No reason for change has been put forth. No claim of abuse of court discretion has been made. No showing of denial of rights to juveniles has been demonstrated.

Proponents for the change have failed to substantiate what change will occur with the court as concerns cost or processing of cases or what added protection will realistically be given to juveniles. Cost alone could become a major factor since Rule 40.02 allows for the guardian ad litem to have his or her own counsel even while the juvenile has separate counsel.

The proposed rule of the Commission is flawed in its wording. Paragraph two of Rule 5.01 and 41.01 uses the word "suggests." The word is vague and appears to require that the court make a decision of need for a guardian ad litem on the mere implication by a person that the factors requiring a guardian ad litem exist. A clear request for a guardian ad litem or statement setting forth the criteria for a guardian ad litem should be required.

The criteria, especially "interests in conflict with the child's interests," is very vague. Any suggestion that the parent or guardian has interests in conflict with the child's interests requires the court to review the situation, and the finding of <u>any</u> conflict of interests considered in the context of the matter requires the appointment of a guardian ad litem. What

is a conflict of interest? At disposition the parent agrees with the recommendation of the probation officer that the juvenile receive a chemical dependency evaluation. The juvenile disagrees. Should the proceedings be stopped until a guardian ad litem is appointed and familiarizes himself or herself enough with the matter to proceed?

The approach of the rule as proposed in this report would, if the child had counsel and the court believed the rights of the juvenile were protected, allow the proceeding to continue in the above hypothetical situation. The concerns of the parent and the juvenile would both be taken into consideration by the judge who would make the final decision to accept, reject, or modify the recommendation.

The statute, the Task Force, and the rule proposed in this report all require the juvenile to proceed through the juvenile court system accompanied by an adult.

The rule proposed in this report, in keeping with the Task Force recommendation, retains M.S. 260.155, Subd. 4(b). It is a substantive, legal, and practical way to protect a juvenile's rights by allowing court discretion to determine whether a guardian ad litem needs to be appointed by considering the totality of the circumstances.

Rule 15: Waiver of Counsel and Other Constitutional Rights

Rule 15 should be amended to use a totality of the circumstances test to any waiver in court by a juvenile of his or her rights.

Rule 15 governs waiver of all constitutional rights except the right to remain silent, which is governed by Rule 6.

Rule 15 requires written concurrence on the record by the juvenile's parent(s), guardian, or guardian ad litem before a voluntary and intelligent waiver by the juvenile of a constitutional right can be made.[4]

As shown in this report in the section on Rule 6, both Minnesota case law and United States Supreme Court case law hold that a juvenile alone may waive a constitutional right (the right to remain silent), and the test to determine a voluntary and intelligent waiver is totality of the circumstances.

Minnesota Statute 260.155, Subd. 8,[5] allows the waiver of a right given to a juvenile by Chapter 260 to be made by the juvenile alone when the juvenile is 12 years of age or older, has been fully and effectively informed of the right, and has expressly and intelligently waived the right.

Rule 15, as adopted by the Task Force,[6] adhered to case law and statutory authority with a totality of the circumstances test. The Commission amended the rule to its present proposed form.

The proposed rule of the Commission removes from the juvenile the right to make a waiver and places the right with the parent, guardian, or guardian ad litem. This is accomplished by requiring the written concurrence of the parent, guardian, or guardian ad litem before a waiver can be accepted by the court. This "veto power" strips away from the juvenile the ability to alone exercise the right to waive and makes the

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4. Rule 50, Waiver of Counsel and Other Rights which is for child protection matters repudiates such an approach and basically adopts M.S. 260.155, Subd. 8, and a totality of the circumstances test. Further, Rule 50 addresses only the right to counsel pursuant to Rule 40 and other rights given by the rules and not all constitutional rights.

5. Minnesota Statute 260.155, Subd. 8, states: "Waiver of any right which a child has under this chapter must be an express waiver intelligently made by the child after the child has been fully and effectively informed of the right being waived. If a child is under 12 years of age, the child's parent, guardian or custodian shall give any waiver or offer any objection contemplated by this chapter."

6. March 10, 1982, Task Force draft.

juvenile dependent upon another. In practice, though the delinquency or petty matter action is against the juvenile, the juvenile, even with counsel, is unable to make decisions without the consent of another who, especially in the case of the guardian ad litem, will not be affected by the outcome of the lawsuit. The juvenile in a delinquency matter or a petty matter has much more at risk than a possible adjudication. All the disposition statutes for these matters, Minnesota Statutes 260.185, 260.192, and 260.194, contain the possible removal of the juvenile from the family home. The constitutional rights being considered are those of the juvenile. The juvenile is the subject of the lawsuit. The potential loss of freedom is a risk only to the juvenile. Certainly then, the juvenile should be the individual who controls the decision to exercise or waive the right to exercise a constitutional right. The juvenile's decision may be dependent upon the juvenile knowing of the right and voluntarily and intelligently making a decision. This is exactly the approach used with a totality of the circumstances test.

The criteria for the parent's, guardian's, or guardian's ad litem concurrence or lack thereof is, besides written concurrence, non-existent. No matter how knowledgeable, intelligent, and voluntary the juvenile's actions are, simply the lack of written concurrence stops the juvenile from waiving his or her right.

If a parent or guardian does not concur in waiving a right a juvenile wants to waive, there appears to be a conflict of interest requiring under Rule 5.01 the appointment of a guardian ad litem. Thus, in reality, the blockage of the juvenile's right to waive a right under the Commission's proposed rules may only be accomplished by a guardian ad litem. The ability of the guardian ad litem to knowingly and intelligently make a decision on the juvenile's right is not subject to scrutiny by the proposed rule.

The totality of the circumstances test resolves the problems that beset the Commission's proposed rule.

Interestingly, the Commission adopted a totality of the circumstances test with the juvenile making the decision in child protection matters (see Rule 50). As concerns this issue, there is no rational distinction between juveniles in child protection matters and delinquency and petty matters that would justify the differences between Rule 15 and Rule 50.

Rule 15 is also written inconsistently. In Rule 15.02, Subd 1, and Rule 15.03, Subd. 1, second paragraph, the determination of whether a juvenile has voluntarily and intelligently waived a right is based on the totality of the circumstances. One of the circumstances is then stated to be "the presence and competence of the child's parent(s), guardian, or guardian ad litem . . ." How can parental, guardian, or guardian ad litem presence be a factor to consider when in the same subdivision the written concurrence of one of these people is absolutely required? Also, Rule 15.02, Subd. 3, refers to the child waiving the right to counsel; no reference is made to parent, guardian, or guardian ad litem.

Rule 15 applies only to the waiver of constitutional rights. Other rights given by the rules are not included in the rule, and their waiver appears to be by a totality of the circumstances test.

The rule proposed by this report is the totality of the circumstances test to determine whether the waiver by the juvenile of a right created by the rules is knowledgeable, voluntary, and intelligent.

Rule 21: Admission or Denial

Rule 21 should be amended to clearly show that the decision to admit or deny is the juvenile's.

Rule 21.01 states: "The child may admit or deny the allegations or remain silent."

However, Rule 21.03, Subd. 1, grants the parent or guardian control over whether the court can accept a juvenile's admission. This is accomplished by requiring the court, before accepting the admission of the juvenile, to determine whether the parent(s) or guardian understand all applicable rights and, either on the record or in writing, to determine whether the parent(s) or guardian understand what is set forth in Rule 20.03, Subd. 1(a).[7]

Parental or guardian failure to understand all that the rule requires and in the manner that the rule requires prohibits the child from exercising his or her right to admit the allegations. The section of this report concerning Rule 15 discussed the problems of allowing the right of a juvenile to be controlled by another. Rule 21.03, Subd. 1, is even more onerous than Rule 15. No provision is made for a guardian ad litem to take the place of parent(s) or guardian. Lack of parental or guardian presence estops the entry of an admission. A parent or guardian present, but in conflict with the juvenile, estops the juvenile from admitting.

Again, a totality of the circumstances test is the appropriate approach. The juvenile by this approach holds the right to admit or deny the allegations. The court, in determining whether the admission is knowledgeable, voluntarily, and intelligently made, considers the totality of the circumstances. The presence of parent(s) or guardian and their understanding and wishes can be considered, among other factors, in determining whether the admission is valid.

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7. Rule 21.03, Subd. 1(a), implies parents have certain rights that don't exist. The rights stated in (ii), (iv), (v), (vi), and (vii) are all rights of the juvenile. Clearly, the subdivision was written to mean that the juvenile must understand these rights and the inclusion of parent or guardian was made without consideration to the actual wording of the remainder of the subdivision.

Rule 22: Settlement Discussions

Rule 22 should be amended to allow a juvenile to enter into settlement discussions when there is no counsel for the juvenile and the parent or guardian is either not present, in conflict with the juvenile, or incompetent.

Rule 22.02 allows the county attorney to enter into and reach a settlement agreement with a child represented by counsel only through child's counsel. This is appropriate. If the child is not represented by counsel, settlement discussions may be entered into with the child only in the presence of the parent(s) or guardian. Such a provision fails to consider the occasions when the parents or guardian have a conflict of interest and the child has been appointed a guardian ad litem.

Conclusion to Section I

The underlying philosophy of this report, especially considered in this section, is that as the juvenile proceeds through the court system he or she is accompanied, at a minimum, by an adult who is either a parent, guardian, guardian ad litem, or counsel. Each child, no matter by whom accompanied, possesses the same rights given and protected by the rules, and because the juvenile is accompanied by one person rather than another does not change the juvenile's rights. Further, the exercising of the juvenile's rights is done by the juvenile in consultation with those adults accompanying him or her, and the court accepts the juvenile's decision based on a totality of the circumstances test in determining that the decision was made according to the appropriate legal standard.

SECTION II

Rule 17: Intake

Rule 17 should be stricken.

Purpose of Intake

The purpose of intake is to screen cases prior to the filing of the case in court to determine if a lawsuit should be initiated or if the case should be diverted from court. In screening a case, the facts are reviewed to determine whether the incident alleged is within the jurisdiction of the court, whether there are sufficient facts to prove the case for which the court has jurisdiction, and whether the matter is sufficiently serious to warrant court intervention. Often a second purpose of intake is to hold actual hearings, including admission and disposition, of cases that are determined not to be serious enough for court involvement.

Intake is an Executive Function

Rule 17 gives the court the executive function of approval for charging. Intake screens the cases that would be referred to the county attorney for a petition. If intake personnel decide for any reason, legal or otherwise, not to refer the case to the county attorney, no petition could be issued, though the prosecutor still has the responsibility of drafting a petition. Intake personnel from the judicial branch control the giving to the prosecutor a case to review for charging.

As stated in Brown v. Dayton Hudson Corporation and City of Minneapolis, 314 N.W.2d 210 (Minn. 1982), "the discretionary decision whether to charge and whether to continue a prosecution lies at the very heart of the prosecutorial function." It is the prosecutor's decision to prosecute or not prosecute and

what charge to file. These decisions are not subject to judicial review absent proof by the defendant of deliberate discrimination based upon some unjustifiabale standard such as race, sex, or religion. (See Brordenkircher v. Hayes, 434 U.S. 357 (1978), State v. Andrews, 282 Minn. 386, 165 N.W.2d 528 (Minn. 1968), City of Minneapolis v. Buschertte, 307 Minn. 60, 240 N.W.2d 500 (Minn. 1976), State v. Herme, 298 N.W.2d 454 (Minn. 1980), and ABA Standards on the Prosecution Function, Section 3.9 (1971).)

Rule 17 not only places judicial review over the prosecutorial function, but in effect removes the prosecutorial function from the prosecutor and places it first with the court. Such a removal is a serious violation of separation of powers between the judiciary and the executive branches.

Rule 17 is Without Precedent in Court Rules

The proposal of Rule 17 is without precedent in other rules adopted by the Minnesota Supreme Court. Neither the Rules of Criminal Procedure nor the proposed rules for juvenile court as concerns traffic and child protection matters contain intake provisions. No reasonable rationale has been put forth to justify judicial control over the review for initiation of petitions in delinquency and petty matters.

Rule 17 is Outside the Jurisdiction of the Court

Rule 17 is outside the scope of the jurisdiction bestowed upon the juvenile court pursuant to Minnesota Statutes 260.111 and 260.131. Both of these statutes allow juvenile court jurisdiction to attach upon the filing of a petition or a citation. Court action before jurisdiction has attached is improper and is an attempt to enlarge the court's jurisdiction.

Rule 17 is Outside the Authority of the Proposed Rules

Rule 17 is outside the scope of the authority of the proposed juvenile court rules. Minnesota Statute 480.059 sets out the perimeters of the rules to include only regulation of pleadings, practice, procedure, and forms in juvenile proceedings in all juvenile courts of the state. Rule 17 attempts to regulate matters prior to the initiation of a proceeding by screening matters before they are even petitioned.

Diversion from Adjudication is Allowed by Statute

The juvenile court already has, by statute, an effective means to divert juveniles from an adjudication. Minnesota Statute 260.185, Subd. 3, allows the court when it is in the best interests of the child to continue a matter after a finding of delinquency, but before an adjudication, for a period not to exceed 90 days. The 90-day period can be continued once for another 90-day period. Minnesota Statute 260.192, Subd. 3, also provides for a continuance of a case if the matter should so warrant. Both of these statutes allow the court to divert a juvenile from an adjudication while at the same time being able to keep court control over the matter so that the interests of the child, as well as the public, are protected.

Practical Problems--Conflict of Interest

Rule 17 causes many practical problems.

The judicial screening of cases causes the court a conflict of interest.

One of the basic functions of the court is to be an impartial finder of the facts. To protect the courts' neutrality, the decision to bring a lawsuit lies outside the control of the court. The judge should neither make the decision himself or herself nor supervise the people or administrate the system that makes the decision.

Canon 1 of the Code of Judicial Conduct states that an independent and honorable judiciary is indispensible to justice in our society. Therefore, as stated in the title of the canon, "A judge should uphold the integrity and independence of the judiciary." The court is not independent when it is making a decision that a juvenile should be petitioned to court.

What some have argued is that with Rule 17 the court would not actively involve itself in the decision-making process, but would rather set the policies that would then be carried out by others. However, if a judge sets the policies, that judge has the responsibility to administrate and supervise to make sure that the policies are carried out. Canon 3B of the Code of Judicial Conduct sets out the administrative responsibilities of the judge, which in effect require the judge to actively administate. The judge should not set policy without carrying out the responsibility to see that the policy is adhered to.

Finally, Canon 2 of the Code of Judicial Conduct calls upon the judge to avoid inpropriety and the appearance of inpropriety in all his or her activities. Whenever the court takes an active role or a figurehead role in the screening of cases for charging, the court is going to convey to the public that it is handling the role of the prosecutor. Such an image makes it impossible for the judge to also convey the image of the neutral fact-finder and the image of an individual independent of prosecution.

Supervision by Court is Difficult

One of the important elements of any system in which there is sufficient power of an individual to bring a person before a court where that person may lose his or her freedom is that all decision-making within the system be held accountable to the public. The difficulty that occurs with any intake system under court supervision and administration is staff decisions may not be held

accountable to the public. If the court does not take an active role in supervision or administration in an attempt to avoid a conflict of interest, and the prosecutor has no authority over the system, the people making the screening decisions are without control and leadership by an elected official.

Intake personnel may not even be employed by the court. In some counties court service personnel are employed by the county board and not by the court. In Arrowhead Regional Corrections Board v. Graff, 321 N.W.2d 53 (Minn. 1982), the judge fired a probation officer only to have the trial court find the order invalid as contrary to the employment agreement and collective bargaining agreement that existed between the probation officer and his employer, the Arrowhead Regional Corrections Board. The Minnesota Supreme Court affirmed the trial court. This case effectively points out the difficulty that the court would have if it tried to supervise an intake system in which the personnel of the system are not even employed by the court.

A prosecutor, unlike the court, has no real or apparent conflict of interest in carrying out the duty of screening cases for court. Also, the prosecutor, unlike the court, uses staff who are under his or her authority.

Administration by Court is Difficult

If the court attempts to administrate an intake system, additional problems arise. First, the court is often several judges, in which case there is no singular individual carrying out administrative responsibilities.

Staff within the intake system not only need supervision, but training. Day-to-day operation of an intake system will cause questions to arise for the on-line staff which will have to be worked out with supervisors. If there is no supervisor, as in counties that have only one probation

officer, or the supervisor himself or herself has questions, there is no individual to go to whose decision can be held accountable to the public.

Intake is More Than Screening

Also, the process of intake is far more extensive than reviewing a case to determine whether or not it is within the jurisdictin of the court and whether there are sufficient facts with which to prove the case. Since screening of cases is part of the juvenile justice system, the screener has a responsibility to explain the decision made. Explanation may be needed to be given in court for a case charged. If the case is not sent to the prosecutor for a petition, the police officers are entitled to know why the case did not go forward and what steps can and should be done in similar cases in the future. In some cases the screener should take on an investigative role to acquire more facts to determine whether or not to request a petition.

It is also the responsibility of the chief law enforcement officer, i.e. the person who handles the charging process, to not only explain his or her decisions, but also to train law enforcement personnel and to help coordinate the different parts of the law enforcement system. Training requires, at a minimum, informing the police what criteria is used to screen cases and what is expected of them in the investigation of a case. Training should also include updating police on new laws and cases. This responsibility is not a court function.

Legal Decisions Should Be Made By Lawyers

The determination that a case comes within the jurisdiction of the court and that there are sufficient facts to prove the case is a legal decision. Such decisions should be made by lawyers, and intake personnel almost always are not lawyers.

Rule 17 is Too Broad and Could Lead to a Mini-Court System

Rule 17 is so general that it could be used to circumvent all the other proposed rules. In State v. Hejl, 315 N.W.2d 592 (Minn. 1982), the court stated that the judges may adopt rules of practice not in conflict with rules promulgated by the Minnesota Supreme Court. Rule 17 is designed to allow a case to be diverted from the court. Any policies and rules set out by the local court for intake would not be in conflict with the remainder of the proposed rules because the rules under Rule 17 would be pre-court.

Rule 17 establishes no control as to how extensive the diversion system from juvenile court could be or what rights and protections must exist in the local rules. In effect, an intake system could become a subcourt system, with admission/denials, trials, and dispositions, which could even include restrictions of freedom upon the juvenile. All this could be accomplished without any adherence to the rules used when a juvenile must appear in court.

The Task Force position presented to the Commission was that there be no rule on intake.[1] For the reasons stated above, the Task Force position should be adopted and Rule 17 should be stricken.

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1. March 10, 1982, Task Force draft.

SECTION III

Rule 2.02: Referee and Rule 38.02: Referee

Amend Rules 2.02 and 38.02 to conform to the wording of Minnesota Statute 484.70, Subd. 6,[1] by adding next to the word "hearing" in the first sentence the words "contested trial, motion, or petition."

Rule 18.09: Timing for Rule Eighteen (18)

Amend Rule 18.09 to conform to Rule 65 and the law. This should be done by striking the rule and allowing Rule 65 to control.

Rule 18.09 requires the computation of time for a juvenile detained for a petty matter, a delinquency matter which would not be a felony if committed by an adult, or a traffic matter (see Rule 36.02, Subd. 5) to begin the moment the child is taken into custody and to not exclude any day.

Present law states that a juvenile may be detained without a court hearing for a maximum of 36 hours, excluding Saturdays, Sundays, and holidays (Minnesota Statute 260.171[2]). According to Minnesota Statute 645.15 and State vs. Bradley, 264 N.W.2d 387 (Minn. 1978), (a criminal case concerning when the hours begin to run after an arrest) the hours begin to run at the first midnight following detention. Rule 65 follows the statute and the Minnesota Supreme Court's interpretation of the statute.

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1. M.S. 484.70, Subd. 6: No referee may hear a contested trial, hearing, motion, or petition if a party or attorney for a party objects in writing to the assignment of a referee to hear the matter. The court shall by rule, specify the time within which an objection must be filed.

2. The 1982 Minnesota Legislature amended M.S. 260.171 to allow detention for up to 72 hours, excluding Saturdays, Sundays, and holidays for juveniles detained pursuant to a court order or warrant or juveniles detained because they were found in conditions or surroundings which endanger the juvenile's health or welfare. (Laws of Minnesota 1982, Chapter 469.)

To change the statute by rule for certain types of cases is without good reason and will lead to serious problems.

Assume a juvenile is detained and is subject to Rule 18.09. That juvenile may be held only 36 hours, excluding no days, and the counting of the hours begins the moment of detention. If detention is at 7:00 p.m. Friday, the court hearing must be held by 7:00 a.m. Sunday. The rule allows no provision for extension. If detention is at 7:00 p.m. Saturday, the court hearing must be held by 7:00 a.m. Monday. If detention is at 7 a.m. Sunday and Monday is a legal holiday, the hearing is still required to be held by 7:00 p.m. Monday. If detention is at 7:00 p.m. Sunday, the hearing must be held by 7:00 a.m. Tuesday. What if the judge has court in two separate counties on Monday with court held in the county of detention only on Monday morning? Either the time for the preparation and filing of a petition is narrowed to Monday morning, court is held in another county at great inconvenience to many, or court is held between 5:00 p.m. and 7:00 a.m. in the county of detention.

Starting to count the hours at the first midnight following detention, and excluding Saturdays, Sundays, and holidays, has many practical advantages:

1. Court on Sundays or legal holidays, or at hours when most of us are sleeping, is avoided.

2. Sufficient time is allowed for the matter to be screened and court possibly avoided.

3. Sufficient time is allowed for the facts for a petition to be carefully reviewed.

4. Sufficient time is allowed for adequate notice to be given to the juvenile's parents.

5. Sufficient time is allowed to obtain counsel and/or guardian ad litem for the juvenile.

6. Time will expire for all 36-hour detentions at the same time, which will always be noon.

Some impracticalities will be avoided by striking Rule 18.09:

1. Adding another 36-hour catagory to the law, but establishing a different method to determine the time period just adds confusion to those who must carry out the law.

2. A juvenile may be detained for more than one reason and if those reasons happen to place the juvenile in the catagories covered by Rule 18.09 and Rule 65, which rule will control?

It will be far better in practice to have just Rule 65, and it will also be in accordance with the Task Force recommendations to the Commission.[3]

Rule 20.02, Subd. 2: Child Not in Custody and Rule 54.02: Possession of Petition

Amend Rule 20.02, Subd. 2, and Rule 54.02 by striking "three (3) day" and inserting "twenty-four (24) hours."

Minnesota Statute 260.141, Subd. 1(2), requires personal service to be made at least 24 hours before the time of the hearing. Amending the proposed rules makes them consistent with the statutory notice provisions.

Rule 24.01, Subd. 1: Disclosure by County Attorney Without Court Order and Rule 24.02, Subd. 1: Information Subject to Discovery Without Order of the Court

Amend Rule 24.01, Subd. 1, and Rule 24.02, Subd. 1, to allow local court rule to set a different time limit than five days for required disclosures.

In some counties, because of their size, administratively speaking, because of the number of investigative units within the county or used in a particular case, the five-day time limit may be too restrictive. The rule proposed by this report allows the local court by rule to increase or decrease the period of time.

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3. March 10, 1982, Task Force Meeting.

Rule 24.04: Depositions

Strike Rule 24.04 which concerns depositions.

There is a deposition rule in the Minnesota Rules of Criminal Procedure, but it is hardly ever used. Depositions are costly, they delay the proceedings, they subject witnesses who are without the immediate protection of the court to questioning, and, for juvenile delinquency matters, they have not been shown to be needed. Further, such a rule might be used by the county attorney to circumvent the fact that he or she does not possess a subpoena power for out-of-court questioning.

Rule 30.03, Subd. 5: Disposition

Amend Rule 30.03, Subd. 5, to require discussion of the disposition report with the juvenile and parents and guardian upon their request.

The juvenile, parents, and guardian should be notified of their right to request the person making the report to discuss the contents of the report with them, but actual discussion should take place only upon a request being made. A parent, especially a non-custodial parent, may not be taking part in the proceedings. It is a wasteful use of a report writer's time to require him or her to discuss something with someone who may not want to be a part of the discussion or who has not shown enough interest to attend earlier court hearings.

Rule 32: Reference of Delinquency Matters

Strike Rule 32.05, Subd. 2.

Rule 32.05, Subd. 2, sets out factors to be considered if a prima facie case has not been made or rebutted by significant evidence and the court is determining reference based on totality of the circumstances. It is more appropriate for the legislature to legislate such factors,

as it did in enacting a prima facie standard, than for the court to enact such substantive factors by court rule.

Rule 34.02, Subd. 2(c): County Attorney and Rule 64.02, Subd. 2(c): County Attorney

Amend Rule 34.02, Subd. 2(c), and Rule 64.02, Subd. 2(c), to allow the county attorney the right to inspect and copy court records until the juvenile is 19 years of age.

The rule as presently proposed is too restrictive. In delinquency and petty matters the court can continue to have jurisdiction over the juvenile even though the court has not taken any action during the past year. Even warrants are outstanding for longer than one year. In review of cases for reference and to determine if a prima facie case exists, the court record is needed.

The county attorney is an officer of the court and stands, in relation to the court, in a far different position than the public. The county attorney, to carry out his or her duties, needs access to court documents. Allowing the county attorney access to court records until the juvenile is 19 years old poses no danger to confidentiality as articulated in M.S. 260.161, and does allow the county attorney to efficiently exercise his or her duties.

SECTION IV

RULE 2

REFEREE

2.02 Objection to Assignment of Referee

The child's counsel or the county attorney may object to a referee presiding at a contested trial, hearing, motion, or petition. 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 to a referee at any time. After the filing of an objection, a judge shall hear any motion and preside at any hearing.

RULE 5

GUARDIAN AD LITEM

5.01 Appointment of Guardian Ad Litem

The court shall appoint a guardian ad litem, except as provided by Rule 5.02, to act in place of a parent or guardian to protect the interests of the child when it appears, at any state of the proceedings, that the child is without a parent or guardian, or that, considered in the context of the matter, the parent or guardian is unavailable, incompetent, indifferent to, hostile to, or has interests in conflict with the child's interests.

~~If at any stage of the proceedings any person suggests to the court that the child is without a parent or guardian or considered in the context of the matter the child's parent(s) or guardian is unavailable, incompetent, indifferent to, hostile to or has interests in conflict with the child's interests and the court does not appoint a guardian ad litem, the court shall state in writing or on the record the facts supporting the court's decision.~~

5.02 Determination Not to Appoint Guardian Ad Litem

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 interests of the child are otherwise protected.

5.03 Standards

In determining whether to appoint a guardian ad litem the court should examine the totality of the circumstances. These circumstances include but are not limited to: the presence and competence of the child's parent(s), or guardian, considered in the context of the matter, the parent or guardian's hostility to, indifference to or interests in conflict with the interests of the child, the child's age, maturity, intelligence, education, experience and ability to comprehend.

5.04 Findings

A determination of the court not to appoint a guardian ad litem after a request has been made to appoint a guardian ad litem must be based on a finding on the record or in writing which states the facts on which the decision was made.

5.05 Discretionary Appointment of Guardian Ad Litem

In any other matter the court may appoint a guardian ad litem on its own motion or on the motion of the child's counsel or the county attorney when the court determines that an appointment is in the interests of the child.

RULE 6

RIGHT TO REMAIN SILENT

The complete rule should be stricken.

RULE 15

WAIVER OF COUNSEL AND OTHER CONSTITUTIONAL RIGHTS

15.01 Applicability

Rule 15 governs the waiver in court of the right to counsel and other constitutional rights, and the waiver of other rights pursuant to these rules ~~with the exception of the waiver of the right to remain silent which is set forth in Rule 6~~.

15.02 Waiver of a Right ~~to Counsel~~

Subd. 1 Standards

After being advised of the right to counsel, pursuant to Rule 4, a child~~, with the written concurrence on the record of the child's parent, guardian or guardian ad litem~~ may waive the right to counsel and any other right only if the waiver is voluntary and intelligently made. In determining whether a child has voluntarily and intelligently waived a ~~the~~ right ~~to counsel~~ the court shall look at the totality of the circumstances. These circumstances include but are not limited to: the presence and competence of the child's parent(s), guardian or guardian ad litem, and child's age, maturity, intelligence, education, experience and ability to comprehend.

Subd. 2 Recording

A waiver in court of the right to counsel or any other right shall be on the record.

Subd. 3 Renewal

After a child waives the right to counsel the child shall be advised of the right to counsel, pursuant to Rule 4 at the beginning of each hearing at which the child is not represented by counsel.

~~15.03 Waiver of Constitutional Rights Other than Right to Counsel~~

~~Subd. 1~~ Standards

~~After conferring with counsel, or after waiving the right to counsel, the child, with the written concurrence on the record of the child's parent(s), guardian or guardian ad litem, may voluntarily and intelligently waive any other constitutional right after being fully and effectively informed of the right by counsel or by the court on the record.~~

~~In determining whether the child has voluntarily and intelligently waived any other constitutional right the court shall look at the totality of the circumstances. These circumstances include but are not limited to: the presence and competence of the child's parent(s), guardian or guardian ad litem and their interest in protecting the child's rights, and the child's age, maturity, intelligence, education, experience, and ability to comprehend.~~

~~Subd. 2~~ Recording

~~A waiver of any constitutional right shall be on the court record.~~

RULE 17

INTAKE

The complete rule should be stricken.

RULE 18

DETENTION

18.09 Timing for Rule Eighteen (18)

Rule 18.09 should be stricken.

RULE 20

ARRAIGNMENT

20.02 Timing

Subd. 1 Child in Custody

The child in custody shall be arraigned within five (5) days of being taken into custody. A child in custody may be arraigned at a detention hearing. The child has the right to have a copy of the petition for twenty-four (24) hours ~~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 petition.

The child has the right to have a copy of the petition for twenty-four (24) hours ~~three (3) days~~ before being arraigned.

RULE 21

ADMISSION OR DENIAL

21.03 Admission

Subd. 1 Questioning of Child and Child's Parent(s) or Guardian

Before accepting an admission by the child the court shall determine whether the child ~~and the child's parent(s) or guardian~~ understands all applicable rights. The court shall on the record, or by written document signed by the child and child's counsel, if any, ~~and the child's parent(s) or guardian filed with the court,~~ determine the following:

a) whether the child ~~and the child's parent(s) or guardian, if present,~~ understands:

i) the nature of the offense alleged, and

ii) the right to a trial, and

iii) the presumption of innocence until the state proves the allegations beyond a reasonable doubt, and

iv) the right to remain silent, and

v) the right to testify on the child's own behalf, and

vi) the right to confront witnesses against oneself, and

vii) the rights to subpoena witnesses, and

b) whether the child understands that the child's behavior constitutes the act which is admitted, and

c) whether the child makes any claim of innocence, and

d) whether the plea is made freely, under no threats or promises, and

e) in a delinquency matter, whether the child understands:

i) the possible effect a finding that the allegations of delinquency are proved or an adjudication of delinquency may have on a decision to refer the child for prosecution as an adult, and

ii) where applicable, the possible effect an adjudication of delinquency has on sentencing in adult court.

RULE 22

SETTLEMENT DISCUSSIONS

22.02 Procedure

The county attorney may enter into settlement discussions and reach a settlement agreement with the child only through the child's counsel and may not enter into settlement discussions with a child not represented by counsel unless the parent(s), ~~or~~ guardian, or guardian ad litem are present with the child.

The child's counsel, or if the child is without counsel, the child's guardian ad litem may make a settlement agreement but only with the consent of the child and shall ensure that the decision to enter into a settlement agreement is made by the child.

The court shall require disclosure of any settlement agreement in advance of an admission of the allegations of the petition. When the child enters an admission, the court shall reject or accept the admission on the terms of the settlement agreement. The court may postpone its acceptance or rejection until it has received a pre-disposition report. If the court rejects the settlement agreement, it shall advise the child, child's counsel, child's parent(s) or guardian, and guardian ad litem and the county attorney of this decision on the record and shall call upon the child to either affirm or withdraw the admission.

22.05 Settlement Agreement Not to Include Disposition Recommendation

Settlement agreements shall not include binding recommendations as to disposition unless premitted by court rule.

RULE 24

DISCOVERY

24.01 Disclosure by County Attorney

Subd. 1 Disclosure by County Attorney Without Order of the Court

Without order of the court following the filing of a petition, the county attorney upon request for disclosure by the child's counsel shall within five (5) days of the receipt of the request, or at a different time as designated by local court rule, make the following disclosures.

24.02 Disclosure by Child

Subd. 1 Information Subject to Discovery Without Order of Court

Without order of the court, following the filing of a petition, the child's counsel on request of the county attorney, shall, within five (5) days of the receipt of the request, or at a different time as designated by local court rule, make the following disclosures.

24.04 Depositions

Rule 24.04 should be stricken.

RULE 30

DISPOSITION

30.03 Pre-Disposition Reports

Subd. 5 Discussion of Contents of Reports

The person preparing the pre-disposition report shall discuss the contents of the report with the child and the parent(s) and guardian of the child upon their request unless the child's counsel or counsel for the parent(s) and guardian of the child objects on the record or in a written statement filed with the court to a complete discussion of the report with their client.

RULE 32

REFERENCE OF DELINQUENCY MATTERS

32.05 Necessary Finding

Subd. 2 Clear and Convincing

The county attorney shall demonstrate by clear and convincing evidence, that the child is not suitable for treatment or that the public safety is not served under the provisions of the laws relating to juvenile courts.

~~If a prima facie demonstration pursuant to Minn. Stat. 260.125, Subd. 3 has not been established or has been rebutted by significant evidence, the court, in making its determination as to whether the county attorney has demonstrated by clear and convicing evidence that the child not suitable for treatment or that the public safety is not served under the provisions of the laws relating to juvenile courts, shall consider the totality of the circumstances. This totality of the circumstances may include but is not limited to:~~

~~(a) the seriousness of the offense in terms of community protection,~~

~~(b) The circumstances surrounding the offense,~~

~~(c) whether the offense was committed in an aggressive, violent, premeditated or willful manner,~~

~~(d) whether the offense was directed against persons or property, the greater weight being given to an offense against persons, especially if personal injury resulted,~~

~~(e) the reasonably foreseeable consequences of the act,~~

~~(f)--the absence of adequate protective and security facilities available to the juvenile treatment system;~~

~~(g)--the sophistication and maturity of the child as determined by consideration of the child's home, environmental situation, emotional attitude and pattern of living,~~

~~(h)--the record and previous history of the child,~~

~~(i)--whether the child acted with particular cruelty or disregard for the life or safety of another, and~~

~~(j)--whether the offense involved a high degree of sophistication or planning by the child.~~

RULE 34

RECORDS

34.02 Availability of Juvenile Court Records

Subd. 2 No Order Required

(C) County Attorney

Juvenile court records shall be available for inspection, release to and copying by the county attorney without a court order until a child is 19 years of age or the record is expunged, whichever is first. ~~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 county attorney that inspection, release or copying of the court records is necessary and in the best interest of the child, the public safety, or the functioning of the juvenile court system.~~

RULE 38

REFEREE

38.02 Objection to Assignment of Referee

The county attorney and counsel for those persons who have the right to participate may object to a referee presiding at a contested trial, hearing, motion or petition. 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 be 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 shall preside at any hearing.

RULE 41

GUARDIAN AD LITEM

41.01 Appointment of Guardian Ad Litem

The court shall appoint a guardian ad litem, except as provided by Rule 41.02, to protect the interest of the child when it appears, at any state of the proceedings, that the child is without parent or guardian, or that considered in the context of the matter, the parent or guardian is unavailable, incompetent, indifferent to, hostile to, or has interests in conflict with the child's interests.

~~If at any state of the proceedings any person suggests to the court that the child is without a parent or guardian or considered in the context of the matter the child's parent or guardian is unavailable, incompetent, indifferent to, hostile to or had interests in conflict with the child's interests and the court does not appoint a guardian ad litem, the court shall state in writing or on the record the facts supporting the court's decision.~~

41.02 Determination Not to Appoint Guardian Ad Litem for the Child

The court may determine not to appoint a guardian ad litem for the child when:

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

b) the court finds on facts submitted on the record that the interests of the child are otherwise protected.

41.03 Standards

In determining whether or not to appoint a guardian ad litem for the child the court should examine the totality of the circumstances. These circumstances considered in the context of the matter include but are not limited to: the presence and competence of the child's parent(s) or guardian considered in the context of the matter, the parent or guardian's hostitility to, indifference to or interests in conflict with the interests of the child, the child's age, maturity, intelligence, eduction, experience and ability to comprehend.

41.04 Guardian For More Than One Child

A person may be a guardian ad litem for more than one child in a hearing.

41.05 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.

41.06 Guardian Ad Litem for Parent

The court shall appoint a guardian ad litem for the parent of a child who is the subject of a juvenile protection matter when:

a) the parent is eighteen (18) years of age or older and is incompetent so as to be unable to assist counsel in the matter or understand the nature of the proceedings, or

b) it appears at any state of the proceedings that the child's parent is under eighteen (18) years of age and is without a parent or guardian, or that considered in the context of the matter, the parent or guardian is unavailable,

incompetent, indifferent to, hostile to, or has interests in conflict with the interests of the minor parent.

41.07 Findings

A determination of the court not to appoint a guardian ad litem after a request has been made to appoint a guardian ad litem must be based on a finding on the record or in writing which states the facts on which the decision was made.

RULE 54

FIRST APPEARANCE

54.02 Timing

Subd. 3 Possession of Petition

The child and the child's parent(s) and guardian, their counsel and guardian ad litem have the right to have a copy of the petition for twenty-four (24) hours ~~three (3) days~~ before a first appearance.

RULE 64

RECORDS

64.02 Availability of Juvenile Court Records

Subd. 2 No Order Required

(C) County Attorney

Juvenile court records shall be available for inspection, copying or release to the county attorney without a court order until the child is 19 years of age or the record is expunged, whichever is first. ~~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 county 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.~~

A-12

OFFICE OF THE PUBLIC DEFENDER
C2200 Government Center
Minneapolis, Minnesota 55487
(612) 348-7530

William R. Kennedy, Chief Public Defender

October 29, 1982

Minnesota Supreme Court
State Capitol
St. Paul, Minnesota 55155

Re: Proposed Juvenile Court Rules

Dear Justices:

My staff and I have examined and discussed both the proposed rules and the minority reports by Mr. Robert Scott. We wish to register our opinion and concern about three areas of the Rules.

First, we are convinced that the majority version of Rule 6 regarding admissibility of confessions, should be adopted. In practice, the interrogation of a juvenile suspect by a trained, experienced police investigator tends to be very frightening for the juvenile under the best of circumstances. There is the potential in these encounters for serious abuses of the suspect's basic rights.

Especially as the consequences for juvenile misbehavior grow increasingly severe, we feel it is appropriate to ensure the presence of a sympathetic adult in custodial interrogation. For us the issue is not one of administrative convenience or efficiency, it is a question of what the quality of justice is going to be for young people in this state. We strongly support the proposed Rule 6.

Secondly, we can see no basis for the distinction between detained and non-detained juveniles regarding the requirement of a probable cause statement in the petition. We would urge the Court to amend Rule 19.03 to require that all delinquency petitions contain a probable cause statement.

Thirdly, while Rule 4 sets out the right to counsel and to appointment of counsel, we are concerned that Rule 15.02 regarding waiver of right to counsel, affectively takes that right away. The law presently gives both juveniles and adults the right to appointment of counsel if financial criteria are met. However, the practice differs greatly from that.

In Hennepin County District Court, adults are, as a practical matter, not allowed to enter a plea or proceed without a lawyer. However, in the Juvenile Division of the District Court, between 30% and 40% of those juveniles charged with felonies are allowed to enter pleas without advice of counsel.

We suggest to the Court that Rule 15.02 be deleted and that Rule 4 be amended to adopt the language of Rule 5.02 of the Rules of Criminal Procedure regarding Appointment of Counsel.

Please consider this a request for time to address the court by one of our attorneys who is experienced in the realities of juvenile court practice in Hennepin County.

Sincerely,

William R. Kennedy

William R. Kennedy
Chief Public Defender

WRK/jec

11-1 -- copy to each Justice

11-1-82 -- told his secretary to send over a member of the staff

A-12

HENNEPIN

OFFICE OF THE PUBLIC DEFENDER
C2200 Government Center
Minneapolis, Minnesota 55487
(612) 348-7530

William R. Kennedy, Chief Public Defender

RIGHT TO COUNSEL

The Hennepin County Public Defender's Office recommends that the Proposed Rule 15.02, regarding waiver of the right to counsel, be deleted and that Proposed Rule 4, regarding right to counsel, be amended by adopting the language of Rule 5.02 of the Rules of Criminal Procedure.

RULES OF CRIMINAL PROCEDURE

Rule 5.02. Appointment of Counsel

Subd. 1. Felonies and Gross Misdemeanors. If the defendant is not represented by counsel and is financially unable to afford counsel, the judge or judicial officer shall appoint counsel for him.

Subd. 2. Misdemeanors. Unless the defendant charged with a misdemeanor punishable upon conviction by incarceration voluntarily waives counsel in writing or on the record, the court shall appoint counsel for him if he appears without counsel and is financially unable to afford counsel. The court shall not accept the waiver unless the court is satisfied that it is voluntary and has been made by the defendant with full knowledge and understanding of his rights. If the court is not so satisfied, it shall not proceed until the defendant is provided with counsel either of his own choosing or by assignment.

Notwithstanding the waiver, the court may designate counsel to be available to assist a defendant who cannot afford counsel and to consult with him at all stages of the proceedings.

A defendant who proceeds at the arraignment without counsel does not waive his future right to counsel and the court must inform him that he continues to have that right at all stages of the proceeding. Provided that for misdemeanor offenses not punishable upon conviction by incarceration, the court may appoint an attorney for a defendant financially unable to afford counsel when requested by the defendant or interested counsel or when such appointment appears advisable to the Court in the interests of justice to the parties.

Subd. 3. Standard of Indigency. A defendant is financially unable to obtain counsel if he is financially unable to obtain adequate representation without substantial hardship for himself or his family.

Subd. 4. Financial Inquiry. An inquiry to determine financial eligibility of a defendant for the appointment of counsel shall be made whenever possible prior to the court appearance and by such persons as the court may direct. This inquiry may be combined with the pre-release investigation provided for in Rule 6.02, subd. 3.

Subd. 5. Partial Eligibility and Reimbursement. The ability to pay part of the cost of adequate representation at any time while the charges are pending against a defendant shall not preclude the appointment of counsel for the defendant. The court may require a defendant, to the extent of his ability, to compensate the governmental unit charged with paying the expense of appointed counsel.

(Amended March 31, 1977, effective July 1, 1977.)

OFFICE OF THE PUBLIC DEFENDER
C2200 Government Center
Minneapolis, Minnesota 55487
(612) 348-7530

William R. Kennedy, Chief Public Defender

November 3, 1982

Mr. John McCarthy, Clerk
Minnesota Supreme Court
State Capitol
St. Paul, Minnesota 55155

A-12

Dear Mr. McCarthy:

It is my understanding that our office has been provided an opportunity to speak to the Court regarding the Proposed Rules of Procedure for Juvenile Court on Tuesday, November 16, 1982. Please be advised that Lane Ayres, who is an attorney on my staff, will appear on behalf of this office and is authorized to represent this office's positions on the proposed rules. Mr. Ayres comments will focus on those issues raised in our letter of October 29, 1982.

Sincerely,

William R. Kennedy
Chief Public Defender

:jec

cc: Lane Ayres

STATE OF MINNESOTA
In SUPREME COURT

In re: Proposed Rules of Procedure
For Juvenile Court

PETITION

A-12

Please consider the following attached changes and additions to the proposed Juvenile Protection Rules, dated July 20, 1982. These changes and additions are grouped for convenience as follows:

Part I - DISCUSSION OF RECOMMENDED CHANGES AND ADDITIONS

Section 1 - Changes dealing with Time provisions. p.1

Section 2 - Changes dealing with Expense provisions p.2

Section 3 - Other changes and additions substantially affecting the process of litigation p.3-5

Section 4 - Drafting changes and typegraphical errors p.6,7

Part II - ADDITIONAL RULES AND REVISIONS TO PROPOSED RULES IN NUMERICAL SEQUENCE

Section 1 - Additional Rules p.8,9

Section 2 - Revisions to Proposed Rules, in Numerical Sequence p.9

This is also my notification that I desire to be heard on the proposed Rules on November 16, 1982.

Dated: November 1, 1982

William Hershleder
Assistant County Attorney
2000 A Government Center
Minneapolis, MN 55487
Telephone: (612)348-6388

11-1 -- copy to each Justice

Part I - Section 1 Changes dealing with Time provisions

1. Rule 44.02, Subd. 7(A) and 54.02, Subd.3

The three-day period of time should be changed to 24 hours for non-parental termination matters to be consistent with Minn. Stat. §260.141. Providing for a three-day time period increases the risk to the children being pressured by parents or removed from the jurisdiction of the court.

2. Rule 59.02, Subd.2

Examples of good cause should be given: i.e., ability of court to schedule the matter, time requirements for discovery (especially psychological evaluations), and if waived by parents.

3. Rule 60.02

A provision should be added to provide that the motion for amended findings shall not be made any later than the period for a motion for a new trial, as in the case of civil actions.

4. Rule 61.01

The following should be added: The Court may make an adjudication immediately after the admissions are accepted or the allegations to the petition are proved, pursuant to Rule 55 or Rule 59.

Part I - Section 2 Changes dealing with Expense Provisions

Rule 46.03, dealing with providing transcripts, Rule 48.02, dealing with fees and mileage of witnesses, Rule 57.07, dealing with discovery expenses and Rule 63.01, Subd.2D, dealing with appeal costs, state that these costs shall be at public expense, generally available to all participants if the participants cannot pay.

Such expenses could become a drain on the county welfare departments, and accordingly such costs at public expense should not be committed until approved by the court upon motion, pursuant to Rule 49.

Part I - Section 3 Changes and additions which substantially affect the process of litigation

1. Rule 38.04 - Review of Referee's Decision

Subd.5 - A judge's review of a referee decision, after a trial, should be made only upon the verbatim record and not de novo, unless it is a Motion for a new trial, pursuant to Rule 60.01, which specifies the grounds for a new trial. Permitting de novo review is, in effect, permitting a new trial without good cause and would reward inadequate preparation.

2. Rule 39.02 - Right of Parent(s) and Guardian - and
Rule 40.01 - Right of Child and Parents to Separate Counsel

A parent should only be permitted to continue to participate, and obtain counsel, beyond the first appearance if the parent is one of record on the birth certificate, has been adjudicated as such, or acknowledges paternity on the record at the juvenile court hearing. (Notices, per Rule 44, would still be sent to alleged parents for the first appearance).

3. Rule 44.02, Subd.8 - Proof of Service

An affidavit, rather than a written statement, should constitute proof of service.

4. Rule 54.01 (First Appearance) - Generally - and
Rule 55.01 (Admission or Denial) - Generally

A child should not be required to admit or deny allegations, because he is not the respondent. The parents are the only respondents in a dependency/neglect petition.

5. Discovery Rules

a. Rule 57.02 - Methods of Discovery

Interrogatories, pursuant to the court rules, should be permitted, since they could eliminate the need for oral depositions.

b. Rule 57.10, Subd.3 - Add

(c) to answer an interrogatory.

6. Rule 59.04 - Evidence (at trial)

The writer requests that the following sentence be added: "However, statements of very young children will be received in evidence even though such statements constitute hearsay where, in the court's discretion, causing the children to testify would be more traumatic to the child than beneficial to justice." This is the practice in Hennepin County.

7. Rule 60.01, Subd. 1 - Grounds (new trial) - add after the final sentence:

"Where no additional testimony is taken, findings of fact shall not be set aside unless clearly erroneous and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." This language is adopted from Rule 52.01 of the Minnesota Rules of Civil Procedure.

8. Additional Rules

Rules should be provided for the following occurrences.

a. Default - The writer proposes a rule containing appropriate wording from Rule 55 of the Minnesota Rules of Civil Procedure. See Part II, for those situations in which a respondent party does not appear at any hearing, either himself/herself or through counsel.

b. Restraining Order - The writer proposes a rule containing appropriate wording from Minnesota Rules of Civil Procedure, Rule 65, to exclude an abusive parent from a dwelling where abused children reside, in accordance with Minn. Stat. §260.255(1). See Part II for proposed rule.

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(1) 260.255 JURISDICITION OVER PERSONS CONTRAIBUTING TO DELINQUENCY OR NEGLECT: COURT ORDERS.

Subdivision 1. The juvenile court has jurisdiction over persons contributing to the delinquency or neglect of a child under the provisions of subdivisions 2 or 3.

Subd. 2. If, in the hearing of a case of a child alleged to be delinquent or neglected, it appears by a fair preponderance of the evidence that any person has violated the provisions of Section 260.315, the court may make any of the following orders: (continued next page)

(a) Restrain the person from any further act or ommission in violation of Section 260.315; or

(b) Prohibit the person from associating or communicating in any manner with the child; or

(c) Provide for the maintenance or care of the child, if the person is responsible for such, and direct when, how, and where money for such maintenance or care shall be paid.

Subd. 3. Before making any order under subdivision 2 the court shall issue an order to show cause, either upon its own motion or upon a verified petition, specifying the charges made against the person and fixing the time and place of the hearing. The order to show cause shall be served personally and shall be heard in the same manner as provided in other cases in the juvenile court.

Part I - Section 4 Drafting changes and typegraphical errors.

1. Rule 38.04, Subd. 2 - Filing (Review)

Reference to Rule 46 should be to Rule 45

2. Rule 39.05 - Petitioner

Reference to Rule 43.03 should be to Rule 42.03

3. Rule 44.01, Subd.1 - Notice

A notice need not always be a document by the court. Notices of subsequent hearings could be made by counsel, rather than by the court.

4. Rule 44.02, Subd. 3B - Minimum Required Initial Service

Reference to Rule 44.01, Subd. 3A should be to Rule 44.02, Subd. 3A

5. Rule 44.03 - Content of Summons or Notice

Under (a) delete "necessary to provide notice required by Rule 44.02" since 44.02 does not state what is required to provide notice.

6. Rule 45 - Copies of Orders

The two paragraphs are contradictory. (see Part II for suggested wording).

7. Rule 53.03, Subd. 1 - Petition with Probable Cause.

Reference to Rule 54.02 should be to Rule 53.02. It is also suggested for clarity that the Petition with Probable Cause be renamed Petition for Immediate Custody.

8. Rule 57.09 - Deposition

Subdivisions 1 and 6 A partially duplicate each other. Moreover, the heading for Subdivision 6 is misleading in indicating that the use of deposition is for unavailable witnesses only, whereas in fact clause (e), which is adopted from the Civil Rules, applies whether or not a witness is available. Moreover, there is a repetition, in Subdivision 6 B , of the statement that deposition may not be used if the absence of a witness was procured

by the person offering the deposition.

9. Rule 57.10, Subd. 1 - Compelling Discovery

An application for an order to compel a deposition, where a deponent fails to answer a question or to appear, is unnecessary, since the proposed Juvenile Protection Rules already require a prior court order for deposition, pursuant to Rule 57.09, Subd. 1. (This is unlike the rule in civil matters where no prior court order is required). (Rule 57.10, Subd. 4 - Order - adequately provides for sanctions).

10. Rule 60.01, Subd. 4 - Time for Serving Affidavits (new trial)

Change "county attorney" to "any person who has a right to participate, pursuant to Rule 39, or that person's counsel."

11. Rule 62.03, Subd. 4 - PreDisposition Reports - Discussion of Contents of Reports.

As it reads, this rule would prevent discussion of a report's contents if a child is unable to understand a report's contents.

12. Rule 62.04, Subd. 1 - Hearing Procedure

Disposition hearings could be held immediately after the adjudication (Rule 61), rather than after the hearing at which allegations are admitted or proved. (Rules 55.03 and 59)

13. Rule 62.06, Subd. 2 - Hearing-Informal Review

Reference to Rule 55 should be to Rule 44.

Part II - Section 1 - Additional Rules

1. RULE_____ DEFAULT

Rule____.01. Judgment

When a party against whom a petition has been brought has failed to appear at a hearing or otherwise defend as permitted by these rules or by statute, judgment by default shall be entered against him as follows:

(1) The party entitled to a judgment by default shall apply to the court therefor. If a party against whom judgment is sought has appeared in the action, he shall be served with written notice of the application for judgment at least three days prior to the hearing on such application. If the action be one for the recovery of money only, the court shall ascertain, by a reference or otherwise, the amount to which the plaintiff is entitled, and order judgment therefor.

(2) If other relief than the recovery of money be demanded and the taking of an account, or the proof of any fact, be necessary to enable the court to give judgment, it may take or hear the same or order a reference for that purpose, and order judgment accordingly.

Rule____.02. Evidence

The court may admit any evidence except privileged communications, including reliable hearsay and opinion evidence that is relevant.

Rule____.03. Demand for Judgment

A judgment by default shall not be different in kind from or exceed the remedy prayed for in the demand for judgment.

2. RULE____RESTRAINING ORDER (Pursuant to Minn. Stat. §260.255)

Rule_____.01 Temporary Restraining Order; Notice; Hearing; Duration

A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if (a) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate risk or danger may occur to the children who are the subject matter of petition, pursuant to Rule 53, before the adverse party or his attorney can be heard in opposition, and (b) the applicant's attorney states to the court in writing the efforts, if any, which have been made to give notice or the reasons supporting his claim that notice should not be required. In the event that a temporary restraining order is based upon any affidavit, a copy of such affidavit must be served with the temporary restraining order. In case a temporary restraining order is granted without notice, the motion for a temporary injunction shall be set down for hearing at the earliest practicable time; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a temporary injunction, and, if he does not do so, the court shall dissolve the temporary restraining order. On written or oral notice to the party who obtained the ex parte temporary restraining order, the adverse party may appear and move its dissolution or modification, and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

Rule_____.02 Temporary Injunction

(1) No temporary injunction shall be granted without notice of motion or an order to show cause to the adverse party.

(2) A temporary injunction may be granted if by affidavit, deposition testimony, or oral testimony in court, it appears that sufficient grounds exist therefor.

(3) Before or after the commencement of the hearing of a motion for a temporary injunction, the court may order the trial of the action on the merits, pursuant to Rule 59, to be advanced and consolidated with the hearing on the motion. Even when this consolidation is not ordered, any evidence received upon a motion for a temporary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial.

Part II - Section 2 - Revised Proposed Rules

Rule 38.04. Review

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, pursuant to Rule ~~46~~ 45.

Subd. 5 Procedure. A review by a judge may be on the verbatim recording made pursuant to Rule 46. ~~or may be de novo in whole or in part~~.

Rule 39.02. Right of Parent(s) and Guardian

The parent(s) and guardian of a child who is the subject of a petition have the right to participate in all hearings on a petition unless excluded from the hearing pursuant to Rule 42.03. When excluded from the hearing the excluded person has the right to participate through their counsel. A parent is a person whose name appears on a birth certificate, who has been adjudicated as a parent, or who acknowledges parentage by affidavit or on the record at a juvenile court hearing.

Rule 39.05. Petitioner

When a petition has been drafted and filed by counsel other than the county attorney pursuant to Rule 53.01, the court may permit the petitioner to participate in all hearings unless excluded pursuant to Rule ~~43.03~~ 42.03. When excluded from the hearing the excluded person has the right to participate through their counsel.

Rule 40.01. Right of Child and Parent(s) to Separate Counsel

Subd. 1. Generally. The child has the right to be represented by an attorney who shall act as the child's counsel and who shall not be counsel for the parent(s) or guardian.

The parent(s) and guardian of the child have the right to be represented by an attorney who shall act as their counsel.

A person who claims to be a parent but does not satisfy the requirements of Rule 39.02 has a right to counsel at a first appearance, only.

Rule 44.01. Notice, Summons, Court Orders

Subd. 1. Notice. A notice is a document which provides the information required by Rule 44.03.

Rule 44.02. Procedure

Subd. 3. Minimum Required Initial Service.

(A) Child and Person(s) with Custody or Control. The court shall issue and cause a summons to be served by personal service to the person(s)

with custody or control of the child and to the child who has reached twelve (12) years of age.

(B) Child's Counsel, County Attorney, Parent(s), Guardian, Custodian and Spouse and Their Counsel. The court, unless it finds that notice would be ineffectual and it would be in the interest of the child to proceed without notice, shall issue and cause notice to be served to the persons with the right to participate and the child's custodian not served pursuant to Rule ~~44.01, Subd. 3(A)~~ Rule 44.02, Subd. 3(A), their counsel and guardian ad litem, the child's spouse and the county attorney.

Subd. 7. Timing

(A) Juvenile Protection Matters Except Termination of Parental Rights Matters. Summons or notice by personal service and summons or notice by mail shall be served on the person to whom it is directed sufficiently in advance of the hearing to which it relates to afford the person a reasonable opportunity to prepare for the hearing. At the request of counsel the hearing shall not be held at the scheduled time if the summons or notice has been served less than ~~three (3) days~~ 24 hours before the hearing.

If personal service is made outside the state, it shall be made at least five (5) days before the date fixed for the hearing to which the summons or notice relates.

If service is made by mail a copy of the summons or notice shall be sent at least five (5) days before the time of the hearing or fifteen (15) days before the hearing if mailed to addresses outside the state.

Subd. 8. Proof of Service

(A) Personal Service. On or before the date set for appearance, the person who served a summons or notice by personal service shall file ~~a written statement~~ an affidavit with the court showing:

(i) that the summons or notice was served, and
(ii) the person on whom the summons or notice was served, and
(iii) the date and place of service.

(B) Service by Mail. On or before the date set for appearance, the person who served a summons or notice by mail shall file ~~a written statement~~ an affidavit with the court showing:

(i) the name of the person to whom the summons or notice was mailed, and
(ii) the date the summons or notice was mailed, and
(iii) whether the summons or notice was sent by certified mail.

Rule 44.03. Content of Summons or Notice

Any summons or notice shall contain or have attached:

(a) a copy of the petition, court order, motion, affidavit or other legal documents, not previously provided, ~~necessary to provide notice required by Rule 44.02~~. and

(b) a statement of the time and place of the hearing, and

(c) a statement describing the purpose of the hearing and the possible consequence of the hearing that custody of the child may be removed from the parent(s) or legal custodian and placed with another, and

(d) a statement of rights explaining the right to counsel, and

(e) a statement that:

(i) even with failure to appear in response to the notice of summons the hearing may still be conducted and appropriate relief granted on the petition, and

(ii) further information concerning the date and place of subsequent hearings, if any, may be obtained from the court by a request in writing, and

(f) such other matters as the court may direct.

Court orders shall be stated on the record at the hearing or a copy of the written order shall be mailed to persons who have the right to participate, their counsel, their guardian ad litem ~~and~~, the county attorney who are present at the hearing to which the order relates, and to such other persons as the court may direct.

~~Copies of court orders shall be sent to the persons who have the right to participate, their counsel and guardian ad litem and the county attorney who request such a copy in writing or on the record and to such other persons as the court may direct.~~

Rule 46.03. Expense

If counsel for any person with the right to participate applies to the court for a transcript of all or part of a hearing for an authorized use, pursuant to Rule 46.02 and that person is unable to pay the preparation cost of the transcript, the court ~~shall~~ may direct the preparation and delivery of the transcript to that person's counsel at public expense, in whole or in part, depending on the ability of the person to pay. The court may so order, after a hearing upon a motion pursuant to Rule 49, if good cause exists.

Rule 48.02. Expense

The fees and mileage of witnesses shall be paid by public funds if the subpoena is issued by the court on its own motion or at the request of the county attorney.

If a subpoena is issued at the request of counsel for a person who has the right to participate, and that person is unable to pay the fees and

mileage of witnesses, these costs ~~shall~~ may be paid at public expense upon order of the court, in whole or in part, depending on the ability of that person to pay. The court may so order, after a hearing upon a motion, pursuant to Rule 49, if good cause exists.

All other fees shall be paid by the requesting person unless otherwise ordered by the court.

Rule 53.03. Petition ~~with Probable Cause~~ for Immediate Custody

Subd. 1. When Required. In addition to the content requirements of Rule ~~54.02~~ 53.02, a petition with probable cause shall be filed with the court:

(a) before the court may issue an order pursuant to Rule 51.01, Subd. 1, or

(b) before a placement hearing is held for a child taken into custody without an order.

Rule 54.01. Generally

First appearance is a hearing at which ~~the child and~~ the child's parent(s) and guardian shall be required to admit or deny the allegations of the petition.

Rule 54.02.

Subd. 3. Possession of Petition. The child and the child's parent(s) and guardian, their counsel and guardian ad litem have the right to have a copy of the petition for ~~three (3) days~~ 24 hours before a first appearance, in juvenile protection matters which are not for termination of parental rights.

Rule 55.01. Generally

The ~~child and the~~ child's parent(s) and guardian may admit or deny the allegations of the petition or remain silent. If either the ~~child or the~~ child's parent(s) and guardian who are present at the hearing deny the allegations of the petition, remain silent or if the court refuses to accept an admission, the court shall enter a denial of the petition on the record.

Rule 57.02. Methods of Discovery

A participant may obtain discovery by interrogatories, depositions upon oral examination, inspection of documents or other tangible things, physical and mental examinations and disclosure of information within the scope of this rule.

Unless the court orders otherwise, the frequency and sequence of discovery methods are not limited.

The discovery procedures provided for by this rule do not exclude other lawful methods for obtaining evidence.

Rule 57.07. Expenses

The costs of discovery shall be at the expense of the requesting participant. However, when the participant is unable to afford the costs of discovery, the costs shall be at public expense in whole or in part depending on the ability of the participant to pay. The court may so order, after a hearing upon a motion, pursuant to Rule 49, if good cause exists for such discovery.

Rule 57.09. Depositions

Subd. 1. Generally. Following the initial appearance, any participant may take the testimony of any other person or participant by deposition upon oral examination when there is a reasonable probability that the testimony of a prospective witness will be used at a hearing, ~~and:~~ under any of the conditions specified in Rule 57.09, Subd. 6.

~~(a) there is a reasonable probability that the witness will be unable to be present or to testify at the hearing because of the witness's existing physical or mental illness, infirmity or death, or~~

~~(b) the participant taking the deposition cannot procure the attendance of the witness at a hearing by a subpoena, order of the court or other reasonable means, or~~

~~(c) there is a stipulation by counsel.~~

The court may order that the testimony of a person may be taken by oral deposition upon motion pursuant to Rule 49 and a showing that the information sought cannot be obtained by other means.

Attendance of witnesses at oral deposition may be compelled by subpoena as provided by Rule 48.

Subd. 6. Use of Deposition.

(A) ~~Unavailability of Witness~~. Requirements for Use. All or a part of a deposition so far as otherwise admissible under the Rules of Evidence may be used at any hearing against any participant who was present or represented at the taking of the deposition or had reasonable notice thereof, if it appears that:

(a) the witness is unable to be present or to testify at the hearing because of the witness's existing physical or mental illness, infirmity, imprisonment or death, 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) the witness is at a greater distance ~~that~~ than one hundred (100) miles from the place of the hearing or is out of state, or

(d) there is a stipulation by counsel, or

(e) upon application and notice that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of the witness orally in open court, to allow the deposition to be used.

The court shall not allow the deposition to be used if it appears that the absence of the witness was procured by the party offering the deposition.

(B) Inconsistent Testimony. Any deposition may also be used by a participant for the purpose of contradicting or impeaching the testimony of a deponent as a witness. ~~A deposition may not be used if it appears that the absence of the witness was procured by the person offering the deposition, unless part of the deposition had previously been offered.~~

(C) 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.

Rule 57.10. Failure to Comply; Sanctions

Subd. 1. Compelling Discovery. A participant upon reasonable notice to other participants may apply for an order compelling discovery as follows:

(A) Procedure. An application for an order may be made to the court in which the action is pending, or on matters relating to a deponent's failure to answer questions propounded under Rule 57, to the court in the county where the deposition is being taken. An application for an order to a deponent who is not a participant shall be made to the court in the county where the deposition is being taken.

(B) Failure to Answer. If a ~~deponent~~ person fails to answer a question to an interrogatory propounded under Rule 57 or if a participant in response to a request for inspection or disclosure authorized by Rule 57 fails to respond or permit inspection or disclosure, the discovering participant may move for an order compelling inspection or disclosure. ~~When taking a deposition upon oral examination the proponent of the question may complete or adjourn the examination before applying for an order.~~ If the court denies the motion in whole or in part, the court may make such protective order as it would have been empowered to make on a motion pursuant to Rule 57.

Subd. 3. Failure to Appear or Respond. If a participant fails:

(a) to appear before the officer who is to take that designated person's deposition, after being served with proper notice, or

(b) to serve a written response to a request for inspection or disclosure permitted under Rule 57, after proper service of the request, or

(c) to answer an interrogatory

the court in which the action is pending on motion may make such orders in regard to the failure as are just, including orders within the scope of this rule.

In lieu of any order or in addition thereto, the court shall require the participant failing to act, or that participant's counsel or both to pay reasonable expenses including attorney's fees caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described herein may not be excused on the ground that the discovery sought is objectionable unless the participant failing to act has applied for a protective order as provided by Rule 57.

Rule 59.02. Timing

Subd. 1. Commencement of Trial. A trial shall commence:

(a) for a child placed outside of child's home by court order, within ninety (90) days from the date of the denial of the allegations of the petition, or

(b) for a child not placed outside the child's home by court order, within one hundred twenty (120) days from the date of the denial of the allegations of the petition.

Subd. 2. Dismissal. If the trial has not commenced within the time set forth above or a continuance has not been granted, the petition shall be dismissed unless good cause is shown why the matter has not been brought to trial within the required time. Good cause exists when the court cannot schedule the trial, pursuant to Rule 59.02, Subd. 1, or discovery has not been completed, unless failure to complete discovery is due to neglect by the party requesting discovery, or when the parent(s) or guardian waive the requirement under Rule 59.02, Subd. 1.

Rule 59.04. Evidence

The court shall admit only such evidence as would be admissible in a civil trial. However, statements of very young children will be received in evidence even though such statements constitute hearsay where, in the court's discretion, causing the children to testify would be more traumatic to the child than beneficial to justice.

Rule 60.01. New Trial

Subd. 1. Grounds. The court on written motion of counsel for any person having the right to participate or the county attorney may grant a new trial on any of the following grounds:

(a) if required in the interests of justice, or

(b) irregularity in the proceedings of the court, any court order or court abuse of discretion, whereby any person was deprived of a fair trial, or

(c) misconduct of counsel, or

(d) accident or surprise which could not have been prevented by ordinary prudence, or

(e) material evidence, newly discovered, which with reasonable diligence could not have been found and produced at the trial, or

(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 petition are proved is not justified by the evidence or is contrary to law.

On a motion for a new trial the court may open the judgment if one has been entered, take additional testimony, amend findings and conclusions, and direct entry of a new judgment. Where no additional testimony is taken, findings of fact shall not be set aside unless clearly erroneous and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.

Subd. 4. Time for Service Affidavits. When a motion for new trial is based on affidavits, they shall be served with the notice of motion. ~~The county attorney~~ Any person who has a right to participate, pursuant to Rule 39, or that person's counsel, shall have ten (10) days after such service in which to serve opposing affidavits pursuant to Rule 45. 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 60.02. Joinder of Motions

Any motion to vacate the findings that the allegations are proved shall be joined with a motion for a new trial. A motion to vacate findings shall not be made any later than the time allowed to order a new trial.

Rule 61.01. Adjudication

If the court finds that the allegations of a petition alleging dependency, neglect, or neglected and in foster care are proved, the court shall adjudicate the child as dependent, neglected or neglected and in foster care or withhold adjuication of the child. The court may make an adjudication immediately after the admissions are accepted or the allegations to the petition are proved, pursuant to Rule 55 or Rule 59.

Rule 62.03. Pre-Disposition Reports

Subd. 4. Discussion of Contents of Reports. The person making the pre-disposition report shall discuss the contents of the report with the persons who have the right to participate ~~unless:~~ except to ~~(a)~~ the child, if the child is unable to understand the contents of the report,

and unless ~~(b)~~ counsel or the guardian ad litem for a person with the right to participate objects to this discussion on the record or in a written statement filed with the court.

Rule 62.04. Hearing

Subd. 1. Procedure. Disposition hearings shall be separate from the hearing at which the petition is proved and may be held immediately following the adjudication hearing, ~~at which the allegations of the petition are proved~~ pursuant to Rule 61.

Disposition hearings shall be conducted in an informal manner designed to facilitate opportunity for all participants to be heard.

Rule 62.06. Informal Review

Subd. 2. Modification of Disposition. Upon review the court may modify the disposition when:

(a) there appears to be a change of circumstances sufficient to indicate that a change of disposition is necessary, or

(b) it appears that a disposition is inappropriate. Within ten (10) days of a modification of a deposition, the court shall inform in writing those persons entitled to notice pursuant to Rule ~~55~~ 44 of the modification of deposition and the right to a formal review hearing pursuant to Rule 62.07, Subd. 1.

Rule 63.01. Appeal

Subd. 2. Procedure

(D) Attorneys' Fee. Upon appeal if the child or the child's parent(s) or guardian cannot afford the costs of appeal, these costs ~~shall~~ may be paid at public expense in whole or in part depending on the ability of the child, and the child's parent(s) to pay, if the court finds after a hearing upon a motion, pursuant to Rule 49, that good cause exists to make such an order.

THOMAS L. JOHNSON
COUNTY ATTORNEY

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November 1, 1982

A-12

John McCarthy, Esq.
Clerk of the Supreme Court
State Capitol
St. Paul, Minnesota 55155

Re: Proposed Rules of Procedure for Juvenile Court

Dear Mr. McCarthy:

Enclosed herewith, please find ten (10) copies of a document entitled Petition Concerning Proposed Rules of Procedure for Juvenile Court. The Petition sets forth the position of the Hennepin County Attorney's Office.

I request that time be allocated to a representative of our office to speak at the hearing scheduled for November 16, 1982. Our speaker will be Toni A. Beitz, Supervisor of our Juvenile Section. The Proposed Rules are of considerable importance to the Juvenile Justice system in Hennepin County and to the functioning of our office. But for the fact I will be out of town, I would have planned to appear.

Very truly yours,

THOMAS L. JOHNSON
Hennepin County Attorney

TLJ:cm
enclosure

11-1 -- Copy to each Justice

P E T I T I O N

REPORT OF THE HENNEPIN COUNTY ATTORNEY CONCERNING THE PROPOSED JUVENILE COURT RULES

BY: Office of Hennepin County Attorney

THOMAS L. JOHNSON, County Attorney

TONI A. BEITZ, Supervisor - Juvenile Section
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348-8533

REPORT OF THE HENNEPIN COUNTY ATTORNEY CONCERNING THE PROPOSED JUVENILE COURT RULES

Introduction.

The purpose of this report is to present to the Minnesota Supreme Court concerns, data, analysis, arguments, and hopefully, educated speculation concerning the Proposed Rules of Procedure for Juvenile Court (hereinafter referred to as the "Rules" or "Juvenile Rules".) The report does not purport to be a scholarly piece addressing primarily the philosophy of the Rules but is rather an attempt to assess their potential impact upon the juvenile court practitioners, particularly in Hennepin County, if adopted as drafted. The report reflects the observations of staff attorneys in this State's most populous county. We recognize that our perceptions are influenced by the high volume of cases handled in our court system, by its urban environment, and by the relative sophistication of the youths who appear in our court. We realize also that our perspectives are influenced by the adversary role as prosecutors that has evolved in the juvenile system since the Gault decision. Nevertheless, as prosecutors, it is our ethical obligation to seek justice; we feel that obligation keenly and have tried to keep that consideration in the forefront when analyzing these Rules.

There are many features of these Rules which we welcome. There are several with which we are in basic, if not total, agreement. We generally support the need for statewide uniform rules, although our unique needs and problems--primarily of volume and sophistication of juveniles--sometimes are not fully recognized in the Rules. We applaud the creation of separate rules for delinquency and for child protection matters. This satisfies a long-felt need for these two very distinct practices. We are pleased that several of the Rules of Criminal Procedure were adopted with only slight modification, as we believe that this will inure to the benefit of represented juveniles by increasing the effectiveness of the defense bar who will no longer struggle with several sets of rules.

However we do not support all of the Rules nor the philosophy they seem to express. Rather we endorse the Petition/Minority Report Concerning the Proposed Juvenile Court Rules) prepared by Robert Scott. It sets forth most of the major and more philosophical objections which we have to the Proposed Rules. It is cogent and complete. For most of the Rules about which we have major concern, we have not offered additional comments but we incorporate by reference the positions of the Minority Report to avoid needless duplication.

Most of the comments we present are critical of the Proposed Rules and suggest amendment. We are troubled by frequent instances, examined in some detail hereinafter, in which the Rules seem to expand, limit, modify, or in some instances, directly contravene the Juvenile Code, case law, and constitutional law. Several of the Rules contain provisions which are not procedural but substantive. We believe that this exceeds the drafters' legislative grant and we believe further that authority to make substantive changes cannot and should not be delegated to a Commission such

as was created. We are, perhaps not coincidentally, at odds in many instances with what appears to be the philosophy of the Rules and believe that much of it runs counter to the recent legislative changes in the Juvenile Code.

We are also mindful of the costs and the practical impact of implementing many of these Rules and believe that this was not given full consideration by the drafters. We believe many of these Rules would require the expenditure of a vast amount of scarce public resources for procedures, reports and processes which are not constitutionally nor statutorily mandated and which seem to add very little of meaning to the protection of juveniles' rights. Were there substantial abuses documented to justify such costs or procedures, we might have agreed with them. But we do not believe there is any documentation to warrant such measures.

The remainder of this report consists of Rule-by-Rule commentary, emphasizing primarily if not exclusively the Rules or portions of Rules with which we do not agree.

We are in basic agreement with the following Rules and therefore offer no comments:

Rule 1 - Scope, Application, General Purpose, and Construction

Rule 3 - Right to Participate

Rule 8 - Privacy

Rule 10 - Copies of Orders

Rule 23 - Advisory by County Attorney of Evidence, Identification Procedure and Additional Offenses

Rule 26 - Evidentiary Hearing

Rule 28 - Post Trial Motions

Rule 29 - Adjudication

Rule 35 - Time

On the following Rules, we comment:

Rule 2. Referees.

We support the Minority Report recommending the amendment to conform the wording of Rule 2.02, to the Minn. Stat. §484.70, Subd. 6.

Rule 2.04 Subd. 2 provides that the right to review may be exercised within 10 days. Minn. Stat. §260.031 Subd. 4 provides that such right must be exercised within three (3) days of receipt of the notice of findings. The rule must be consistent with the statutory provision and cannot expand it. Minn. Stat. §480.059 Subd. 1. It should be amended to conform to the tatute.

Rule 2.04 Subd. 3(C) grants the parents the right to review findings "made after the allegations of a petition have been proved." This would appear arguably to permit the parent to challenge the decision that the petition was proved, which obviously can only occur after the allegations are proved. The intent of the Rules appears to be to give the parents full participation rights only in post-trial hearings. The language of this Rule should be drafted to clarify that.

Rule 2.04 Subd. 5 leaves open the question whether a review will be de novo or by transcript. The rule should be drafted to provide that the review shall be by transcript unless good cause can be shown why a de novo hearing should be held. Minn. Stat. §260.031 Subd. 4 provides only that the minor, or the parents or custodian are entitled to a "rehearing".

The rule should be drafted to provide that the review shall be by transcript unless the party requesting the review can show good cause for a hearing de novo. Alternatively, the rule should be written to permit de novo hearings only for hearings other than trials and reference hearings. The reason for our concern in this regard is relatively simple: trials and reference hearings typically involve the necessity of producing citizen witnesses--many of whom, in juvenile court, are juveniles themselves--who are required to take time from work, school, or their other pursuits to testify.

In some cases a court appearance is a hardship; in some it is an irritant; in all it is an interruption. Unless there is a significant policy reason justifying their return appearance, fairness to the witnesses should dictate that "once is enough."

There is no reason to believe that a transcript would not form a sufficient basis for the judge's review. Indeed, it is the basis upon which all major legal decisions are made by the U.S. Supreme Court; the Minnesota Supreme Court; the District Courts, in appeals from county courttodistrict court, Minn. Stat. §487.39 and Minn. R. Crim. P. 28.01 and the district court in appeals from the probate juvenile court State ex rel Eagle v. Omodt, 312 Minn. 53, 250 N.W.2d 596 (1977).

Rule 4. Right to Counsel.

We strongly support the philosopy of this Rule that each juvenile appearing before the court is entitled to counsel at public expense if his or her parent is financially able but unwilling to employ counsel. This will be a departure from current practice in Hennepin County in which the eligibility of a juvenile for publicly paid counsel is determined by the parents' financial status unless there be a "conflict" between the parent and the juvenile. It is important to note, however, that the implementation of this Rule will have significant financial impact on our County. In 1980, the Hennepin County Juvenile Court estimated that approximately 40% of juveniles appearing before it appeared without counsel. To increase the percentage of represented youth, either by providing more public defenders or by payment to members of the private bar, will be costly. There will be other cost items associated with this as well: an increase in represented youths can probably be expected to cause an increase in the number of cases pre-tried and tried. Finally, if the Court orders parents to reimburse the County for the expense incurred, there will undoubtedly be administrative, legal, and perhaps court time and expense associated with the collection process.

We seriously question the need for publicly financed separate legal representation of parent and juvenile in a delinquency proceeding as permitted by Rule 4.02.

The Rule does not limit this right to specific circumstances--where some independent right of the parent is at stake--e.g. removal of a child from parental custody. Rather it appears to permit separate counsel "on demand". The cost implications of implementing this Rule are enormous. It could, obviously, double the number of public defenders required to serve in juvenile court proceedings, if parents or guardians took advantage of this "right".

Rule 5. Guardian Ad Litem.

We support the position expressed in the Minority Report on this Rule.

Rule 6. Right to Remain Silent.

We support the position expressed in the Minority Report on this Rule. It should be stricken completely.

Rule 7. Presence at Hearings.

To the extent that Rule 7.02 would permit a hearing to be held in the absence of the accused, it would appear to run a substantial risk of violating the accused's right to confrontation. To construe the child's "voluntary" or an "unjustified" absence as a waiver of his right to be present and his constitutional right to confrontation will seldom, if ever, be warranted. The Rule itself runs contrary to the provision of Rule 15 that all waivers must be on the record or in writing and contrary to Minn. Stat. §260.155, Subd. 8 which requires that a waiver be

"an express waiver intelligently made by the child after the child has been fully and effectively informed of the right being waived." The Rule also appears to be inconsistent with Minn. Stat. §260.155 Subd. 5, which permits the Court to excuse the juvenile only after a finding of delinquency and when it is in the juvenile's best interest.

Rule 7.03 is drafted in such a fashion so that it would appear to permit exclusion of the County Attorney without cause, unless the County Attorney is deemed to be "counsel" within the meaning of the phrase which excepts counsel from the possibility of exclusion. Because Rule 3.02 gives the County Attorney the right to participate in all hearings, a case can be made that "counsel" does include the County Attorney. On the other hand the County Attorney is not so designated in other places in the Rules.

Rule 9. Notice.

We strongly support the concept of mailed notice for petitions. It has been the norm in Hennepin County for at least the past seven years and has proved to be quite satisfactory and certainly more economical than personal service.

We note that Rule 9.02, Subd. 5 make reference to Minn. R. Civ. P. 4.05 and provides that "Service by mail shall be made in the manner provided by Rule 4.05 of the Minnesota Rules of Civil Procedure." The current version of that Rule provides that "Process other than summons and subpoena shall be served as directed by the court issuing the same." The reference in this Rule to a rule which, in turn, states that the issuing court decides, is not very useful. It would appear that the more direct statement would be appropriate, particularly since Rule 9 contemplates the service of a summons by mail and Rule 4.05 specifically excepts the summons and subpoenas from its ambit.

Rule 9.02 Subd. 6 expands the statutory time for mailed service out of state to fifteen (15) days. Minn. Stat. §260.141 Subd. 1(b) covering this matter specifies fourteen (14) days. The Rule must be made consistent with the statute.

Rule 9.03 greatly expands the statutory requirements for the content of the summons and notice. We question whether it is necessary or appropriate for any or every summons or notice to contain the statements required in subsections (c), (d) and (f)(ii). The statute requires only that the petition be attached, that the right to counsel be set forth and that there be a statement of the consequences of nonappearance. Minn. Stat. §260.135 Subd. 1. The additional "educational" content required by the Rules should be discretionary with the court.

Rule 11. Recording.

Rule 11.03 provides that the parents or juvenile are entitled to a transcript, at public expense, depending on ability

to pay. Neither this Rule nor other Rules provide any standards or guidelines by means of which to determine whether a juvenile or his or her parents can afford to pay for these various services nor any procedural mechanism by means of which the court is to determine this eligibility. We would recommend that there be standards included similar to those set forth in Minn. R. Crim. P. 5.02, Subd. 3, 4 and 5. The charges should be assessed as they are in Minn. R. Crim. P. 29.02, Subd. 7.

Rule 12. Continuances and Advancements.

We believe that it would be useful to have language specifically permitting a continuance or advancement by a probation officer. In Hennepin County most disposition hearings are handled primarily by Court Services personnel without the participation of the County Attorney. If this rule is strictly construed, it would appear to require the County Attorney to become involved in the purely procedural aspect of moving for a continuance for the benefit of the Court Services probation officer. This would seem, in most cases, to be an unnecessary use of County Attorney resources. We also believe that the rule should permit motions for continuances to be made without a writing upon consent of all parties (Rule 14 requires a writing "for every motion.")

Rule 13 - Subpoenas.

The statutory authority for the payment of witness fees leaves it ambiguous whether or not fees must be paid before the appearance, as in a civil proceeding, or after the appearance as in a criminal procedure. See Minn. Stat. §§357.22, 357.24. The ambiguity in the statute would seem to call for clarification by rule. We would request that this be done and that the rule specify that witness fees be payable after the appearance as is done in criminal cases.

Rule 14 - Motions.

Rule 14.02 Subd. 1 contains complications and extra costs because of the separate participation of the parent, for it requires the serving of all motions on both parent and juvenile. This represents an added cost which will be borne by the public for no readily apparent reason. This Rule does not limits its applicability to post-trial motions. Thus even though the parent would not have a right to participate in a pretrial motion, he or she would have to be served. Indeed, most motions filed, other than requests for continuances, would likely be pre-adjudicatory motions--e.g. motions for suppression of evidence, for discovery, motions to dismiss. etc.

We would request that the Rule permit the Court to allow oral motions under local rules as is done in Minn. R. Crim. P. 32.

Rule 15 - Waiver of Counsel and Other Constitutional Rights.

We support the positions expressed in the Minority Report

on this rule. Additionally we note that the requirement that the concurrence be in writing and on the record appears redundant.

This redundancy will increase the time required for the court hearing and out-of court time required in the preparation of the writing. It will also increase the volume of papers required to be processed and filed by court clerical personnel. But the duplication does not seem to add anything of substance to the protection of the juvenile's rights. It should permit such concurrence to be on the record. Further, the rule, ironically, appears not to require that the juvenile's waiver be in writing and on the record, but only that the parents' concurrence be such.

Rule 16. Immediate Custody.

Rule 16.01 requires that a judge find probable cause to believe that certain conditions exist before he or she may issue a warrant for custody. With that requirement, we have no quarrel. However, the Rule seems to require that a petition be filed before the warrant will issue. (Rule 19.04 Subd. 1(a) confirms this.)

Rule 16.01 Subd. 1 reads "a warrant...may issue if the court find from facts set forth separately in writing in or with the petition..." There may be situations where the police authorities are investigating a serious delinquent act and believe that a warrant is necessary to take the child into custody. However, the investigation may not be complete; or the timing may be such that a county attorney is not available to draft a petition, i.e. the investigation is proceeding at night or on the weekend. The Rule should clarify a procedure by means of which a warrant can be obtained in these cases as well. The policy of the rules should be to encourage officers to seek a warrant before taking a juvenile into custody rather than making warrantless arrests.

Rule 17. Intake.

We support the positions expressed in the Minority Report.

Rule 18. Detention.

Rule 16 relating to immediate custody refers throughout to a "warrant" for custody. Rule 18 refers to a juvenile taken into custody with a "court order." If "court order" and "warrant" mean the same thing, Rule 16 and 18 should be drafted to use the same terminology. If "court order" and "warrant" are not interchangeable, then Rule 18 should refer to both "court order" and "warrant" throughout. It would also be useful in achieving clarity if the two terms were defined and the circumstances under which each could be obtained were specified.

Rule 18.01 Subd. 2(A) provides that "The person to whom the child is to be released may be requested to promise to bring the child to court..." Minn. Stat. §260.171 Subd. 1 provides: "That person shall promise to bring the child to court..." The

statutorily mandated "shall" should not be diluted by the permissive "may" of the Rule. Further the statute provides that if the promise to return the child is violated, it is punishable as contempt. The Rule should not selectively incorporate only part of the statute; if it is necessary to reiterate statutory provisions in the Rules, the Rules should be faithful to the statute.

Rule 18.01 Subd. 2(C)(1) provides that "No conditions of release may be placed upon a child released "by persons other than the court." The statute, however does appear to permit such persons to impose such a condition: i.e. the extraction of the promise to return to court. The Rule should be clarified so as not to exclude this "condition of release."

The intent and meaning of the last portion of Rule 18.01 Subd. 2(C)(2) is unclear. It provides: "Any conditions of release terminate after thirty-six hours unless a detention hearing has commenced and the court has ordered continued detention." Is it saying that a conditionally released juvenile is entitled to a "detention hearing"? If the juvenile is released after an initial detention hearing, does the court have no authority to continue the "conditions of release" beyond 36 hours? Is a review hearing for the conditionally released juvenile required every 36 hours even though a review hearing for a detained juvenile is required only every 8 days? Is a "conditional release" deemed to be "continued detention?"

We are concerned that this rule may have a detrimental effect on our county's innovative and award winning "Home Detention" program. Under this program a juvenile who otherwise meets detention criteria, is given an opportunity to go home under conditions monitored by a court worker in cooperation with the parent or custodian. In most situations it involves, at minimum, an order that the child attend school, but otherwise remain at home unless accompanied by a parent. While the program does involve a restriction on liberty, it cannot be equated to the "detention" authorized by the statute. To require review hearings would have serious consequences on this program.

Rule 18.02 Subd. 1 requires a report by an officer which includes information in four areas. It appears to duplicate Minn. Stat. §260.171, Subd. 5 but omits two requirements, one of which was added by Laws 1982, Ch. 469 §5, viz., "a statement that the child and his parents have received the notification required by Subd. 4 or the reasons why they have not been so notified," and "any instructions required by Subd. 5a, (instructions to withhold notification if disclosure would endanger the juvenile).

Rule 18.02 Subd. 2 appears to duplicate Minn. Stat. §260.171 Subd. 6. However, that statute was also modified by Laws 1982, Ch. 469. Although the sections of Laws 1982, Ch. 469, apply specifically to the supervisor of a "shelter care facility" as opposed to the supervisor of a "secure detention facility", Rule 18 on detention apparently uses the term "detention facility" to include both "secure detention" and "shelter care". For that

reason the drafting to include these new provisions may be awkward. However, as has been a consistent them herein, where the rules duplicate or reiterate the statute, they should do so fully and accurately.

Rule 18.03 entitled "Identification Procedures" should be removed from Rule 18. If a rule covering this subject is deemed necessary, it should be located where it more logically belongs, i.e. as a subdivision of the Rule concerning records, Rule 34. This would be consistent with the location of this subject in the Juvenile Code. See Minn. Stat. §260.261, Subd. 3.

The rule, however, has flaws in addition to its location. Rule 18.03 Subd. 2(B) permits a juvenile not to participate in a line-up unless he is so ordered. We are aware of no authority which permits a detained person who is not the subject of an investigation to resist a request to participate in a lineup or which gives a person an absolute right to have a court review the decision that he or she should participate. One of the practical difficulties with a rule such as this becomes evident when one considers the difficulty in scheduling a fair lineup even under the present circumstances. The population in a juvenile detention center is likely to be small. It is likely to cover an age range of 14-18 years, ages which involve marked physical and maturity distinctions in height, weight, facial hair, etc. The population will be male and female; there will be an admixture of racial and ethnic features. There is no accessible non-detained population of juveniles from which volunteers can be solicited to participate in lineups to try to match the necessary characteristics to ensure a fair lineup. To require the police investigator potentially to speak with every person selected to appear in the lineup, advise him or her of the right to refuse, and the county attorney to file a discovery motion to obtain the court order if one of the necessary candidates does refuse, would seem to place an unnecessary impediment to a straightforward procedure which involves minimal intrusion into the routine of the detained juvenile. It would be cumbersome enough were the rule drafted to permit the officer to obtain an ex parte order. But by including the language "pursuant to Rule 24.02 Subd. 2(A)" within Rule 18.03 Subd. 2(B), the rule could have the effect of requiring 5-6 separate motions to be served on 5-6 separate defense counsel and parents, to be heard at 5-6 separate hearings or pretrial conferences. The delay involved in this would probably have the effect of eliminating this tool from any investigation. (The delay would also arguably necessitate finding new subjects as the candidates were released from detention or sent to other facilities.)

Rule 18.03 Subd. 3(A) requires the filing of a discovery motion to permit the fingerprinting of a juvenile accused of a gross-misdemeanor or misdemeanor. This is a substantive requirement which finds no basis in statutory or case law of which we are aware. The requirement of a discovery motion also misperceives

the stage at which the fingerprint is likely to be obtained. A fingerprint is customarily taken at time a juvenile is taken into custody. Since a petition probably will not have been filed, a discovery motion is not relevant since discovery comes after the initiation of court action. On those cases in which a fingerprint is deemed desirable or necessary for investigative purposes, but for which detention may not otherwise be sought, the arresting officer will be required to seek the juvenile's detention while the case is reviewed, petitioned, arraigned, and discovery motions filed and heard or to release and then take the child into custody a second time.

It is difficult to conceive of any abuses which this rule may have been designed to remedy; but the impediment to legitimate and non-intrusive police identification procedures is considerable.

Finally, Rule 18.03 Subd. 1(B), Subd. 2(D), and Subd. 3(B) require that police authorities file reports with the court after a juvenile has been photographed, has participated in a lineup, or has been fingerprinted. There is no statutory authority for the reporting requirement. There is no readily apparent protection to any juvenile's rights in having such a requirement. It will involve substantial additional paper work for the police and for the courts. We therefore believe it should be stricken.

The statute and Rule 18.04 Subd. 1 require that a request for a detention hearing be made within twenty-four (24) hours of detention. Rule 18.04 Subd. 2 provides that such a request "may be made only under the supervision of the county attorney (emphasis added). The rule should permit juvenile detention staff personnel as well as the county attorney to make the request. One of the major reasons for this provision would be that the detention center staff personnel, at least in Hennepin County and presumably in other counties as well, are routinely available 24 hours a day, seven days a week. This is not the staffing pattern in the typical county attorney's office and to provide such availability would involve substantial costs for overtime. Additionally, detention center staff personnel often have had direct contact with the arresting officer, the juvenile and his family to obtain data relevant to the alleged incident which caused the arrest and to the family situation. They do not have the same potential ethical problems of conflicts of interest in questioning the juvenile or the family that the county attorney would have. Because they have the first-hand data they are often in a better position to know whether detention would be necessary or desirable. It is questionable whether the present Hennepin County Attorney staff could handle this additional volume of cases which this rule would impose. In Hennepin County in 1980, 3137 detention hearings were held; in 1981, 3178 detention hearings were held; up to the end of September 1982, 2242 detention hearings were held. Finally, it does not appear to be feasible nor desirable under present administrative structures to transfer supervision of detention center staff personnel to the county attorney. Ironically, both under present Hennepin County practice and under the proposed rules, detention center staff does have discretion to release a juvenile. See Rule 18.01

Subd. 2(C). The discretion to request a detention hearing would seem to be a logical corollary to this authority.

Rule 18.05 Subd. 4 reads that "Subject to constitutional limitations and privileged communications," hearsay and opinion evidence may be admitted at the detention hearing. The same language is repeated in Rule 18.08 Subd. 2(C). If carried to its logical conclusion, this would permit one to argue that a statement obtained from the juvenile or other evidence could not be considered at a detention hearing until a so-called Rasmussen hearing had been held to determine whether it was constitutionally obtained. We are aware of no law which would require such a limitation. Obviously it would be impractical to have a suppression hearing to determine what evidence the court can consider at the detention hearing. The language quoted above should be stricken.

Rule 18.08 Subd. 2(B) provides that upon a showing by the juvenile of a "substantial basis" for a request for a formal review, the court shall schedule a review hearing. This seems to limit the statutory right to a review hearing at any time a party notifies the court that he or she wishes to present new evidence. Minn. Stat. §260.172 Subd. 4.

We oppose Rule 18.09 and support the position expressed in the Minority Report on this rule. In addition to the reasons expressed therein, there is no statutory basis for treating the misdemeanor or petty matters differently from felonies as regards time computation. Indeed, the Rule, which provides that the time computation "shall not exclude any day" is in direct contravention of the statute which provides that time is computed by "excluding Saturdays, Sundays and holidays". See Minn. Stat. §260.172 Subd. 1, Subd. 2, and Subd. 4. By so seriously restricting the time within which a petition is required to be filed, the drafters of the Rule will effectively prohibit detention of juveniles accused of misdemeanor or petty matters. Had the legislature intended to do this it surely would have so specified in the recently passed Minn. Laws 1982, Ch. 544 which created the "petty matters" categories.

Rule 19. Petition.

Rule 19.01 Subd. 4 sets forth the required contents of a "petty petition." It appears to omit the requirement contained in Minn. Stat. §260.132 Subd. 2 and 260.195 Subd. 2 that the petition set forth the time and place of the alleged violation. It appears to add a requirement that is not contained in Minn. Stat. §260.132 Subd. 3 or Minn. Stat. §260.195 Subd. 2 which provide that only the person or persons having custody or control of the juvenile (as opposed to such persons and the parents) be designated to receive notification. The rule should be amended to conform with the statute in both respects.

Rule 19.04 requires that a petition with probable cause be drafted in certain instances. This will be a significant departure from present practice in Hennepin County but one which we believe will be workable without the need for increased staff given the relatively narrow applicability of the probable cause requirement. As set forth above in the discussion of Rule 16, we believe it is permissible for the court to issue a pre-petition arrest warrant. This should be reflected in the Rules.

We are troubled by the provision of Subd. (b) that a probable cause petition must be filed "before a detention hearing". The requirement presupposes that the first hearing for detention will not be held until the passage of the 36 hours permitted to the county attorney for filing a petition. Current Hennepin County Juvenile Court practice is to hold an actual detention hearing within the first 12-24 hours of detention. This would appear to be a practice inuring to the detained juvenile's benefit by assuring early judicial review of the decision to detain. If the rule is applied literally, it would appear that a decision to hold an early hearing would seriously limit--if not render impossible--the ability of the police to complete the investigation, prepare the necessary reports, transport the records to the county attorney and of the county attorney to review the reports, and draft and file the petition. The court should not be faced with the dilemma presented by the Rules present wording: either to abandon the practice of "early" hearings or encroach upon the time permitted by the statute for filing the petition. Rule 19.04 Subd. 1(b) should be amended to read that the petition with probable cause shall be filed within thirty-six hours of the juvenile's being taken into custody.

Rule 19.05(b) permits the amendment of a petition after the introduction of evidence at trial "with the consent of the child and the county attorney". The Rule should not require amendment at this stage to be conditioned upon consent of the child. Rather the Rule should be the same as the corresponding Minn. R.Crim.P. 17.05 which permits amendment "at any time before verdict or finding" if no different or additional offense is charged and if substantial rights of the defendant are not prejudiced.

Rule 19.06 requires the court to approve the filing of every petition and to dismiss the petition if it fails to allege an act governed by the delinquency or petty matters provisions of Minn. Stat. §260.015. In 1980, 4,598 delinquency petitions were filed in Hennepin County Juvenile Court; in 1981, 3,803 such petitions were filed; in 1982, to the end of September, 2,874 delinquency petitions were filed. To require the expenditure of scarce judicial resources to approve or disapprove a petition on its face would appear to be an enormously expensive undertaking which would probably not result in measurable protection of the rights of juveniles.

Rule 20. Arraignment.

We support the position expressed in the Minority Report on Rule 20.02 Subd. 1 and 2.

Additionally, Rule 20.02 Subd. 2 requires that a non-detained juvenile shall be arraigned within twenty days after he has been served. We anticipate that in Hennepin County most petitions will be served by mail. This raises the question whether for purposes of this Rule the time commences to run at the date the petition was placed in the mail or the date of receipt. The Rule should address this issue; we recommend that the former date govern, if there is to be any time limitation imposed. The Rule does not contain any sanction nor provision for action if the arraignment does not occur within the time specified. Nor does it take into account the causes for delay. Can a juvenile take advantage of this time limit to force the court or county attorney to take additional action or refile the petition by simply failing to appear? Is the time requirement one which the juvenile can waive? The intent of this Rule and the potential sanctions for non-compliance should be addressed or the Rule should be stricken.

Rule 21. Admission or Denial.

We support the positions expressed in the Minority Report on this Rule.

In addition, we recommend revision of Rule 21.03 Subd. 3. As written it does not require the court to give any consideration to the potential prejudice withdrawal may cause the county attorney. We believe that this provision be revised to comport with the parallel provision of the Criminal Rules, Minn. R. Crim. P. 15.05 Subd. 2.

Rule 22. Settlement Discussions.

We support the positions expressed in the Minority Report.

Rule 24. Discovery.

We support the positions expressed in the Minority Report.

In addition we are concerned about the provision of Rule 24.03 Subd. 1(B)(ii) which permits the juvenile's counsel to advise the juvenile's parents concerning the so-called parent-child privilege contained in Minn. Stat. §595.02(9). The statute reads, in relevant part,

> "A parent or his minor child may not be examined as to any communication made in confidence by the minor to his parent. ...This exception may be waived by express consent to disclosure by a parent entitled to claim the privilege or by the child who made the communication, or by failure of the child or parent to object when the contents of a communication are demanded..."

The statute then sets forth numerous exceptions to the privilege.

The language of Rule 24.03 Subd. 1(B) (ii) is at best a vast oversimplification of the privilege and at worst a misstatement of its protection. This provision should be clarified to conform with the statute. Unlike many privileges, this one belongs equally to parent and minor child. Either may waive its protection without consent of the other holder. The juvenile's counsel has an obvious interest in influencing his client's parents not to waive their privilege. Because this is so, because the juvenile's counsel is not counsel to the parent, and because a delinquency proceeding is clearly adversarial, the juvenile's lawyer should not be permitted to advise a parent concerning the parent's legal rights or obligations under the privilege. The rule should be revised either to permit both the county attorney and the juvenile's counsel to advise the parent concerning this privilege or, preferably, should prohibit both county attorney and the juvenile's counsel from discussing the privilege with the parent and should require the court to advise the parent and explain the privilege on the record.

If the Rule permitting depositions is not stricken, as recommended by the Minority Report, it should be revised to conform to Minn. R. Crim. P. 21.06 Subd. 2. The Criminal Rule permits the deposition to be used as substantive evidence if a witness testifies at trial inconsistently with his or her deposition; the Juvenile Rule limits its use to impeachment. There is no justification for inconsistency between the two sets of rules on evidentiary issues.

Rule 27. Trials.

Rule 27.02 Subd. 2 provides that unless a trial is commenced within the time limitations of Rule 27.02 Subd. 1, the petition shall be dismissed. The Rule should clarify that such a dismissal is without prejudice to the county attorney's right to reissue the petition. It should also specify that the time limits shall not apply if the juvenile is the subject of a warrant or is otherwise reported to be a runaway or otherwise makes himself or herself unavailable during the period between arraignment and the expiration of the time set forth in the Rule.

Rule 30. Disposition.

Rule 30.01 permits the court to conduct a disposition hearing "after a child has been adjudicated." Rule 30.02 governs the scheduling of the disposition hearing and provides that it should be held within a stated number of days after the "adjudication of delinquency." It is our understanding of the Juvenile Code and of these Rules that the basic issue to be determined at a disposition hearing is whether or not to adjudicate and, if so, what consequences to impose. The terminology of this Rule should be changed to substitute the phrase (used previously in Rule

21.03 Subd. 5) "after the admission has been accepted or the allegations of the petition have been proved" for the phrases "adjudicated delinquent", "adjudicated" or "adjudication of delinquency" in this Rule.

Rule 30.03 Subd. 2 permits the court to order an evaluation of the juvenile in an institution maintained by the Commissioner of Corrections "with the consent of the Commissioner." Minn. Stat. §260.151 Subd. 1 imposes an additional prerequisite on the court's ability to order such placement: i.e. "the agreement of the county to pay the costs thereof." The Rule should be amended to reflect this statutory provision.

Rule 30.06 requires the court to review all disposition orders every six months; Minn. Stat. §260.185 Subd. 4 permits some orders to be reviewed as infrequently as annually and others to be reviewed "periodically" as the court shall set. The Rule should be amended to conform with the statute.

Rule 31. Appeal.

Rule 31.01 Subd. 1(A) provides that a child may appeal from any final order; Rule 31.01 Subd. 1(B) provides the parent or guardian may appeal from a final order "which occurs after the allegations of the petition have been proved". Rule 31.02 provides that the county attorney may appeal from a "pretrial order" and may not appeal "after jeopardy has attached." The governing statute, however, Minn. Stat. §260.291 provides simply that "aggrieved persons" may appeal from "final orders". The statute has left the definition of these key phrases to case law development.

It appears that this Rule not only narrows the statute but that it fails to recognize existing case law. The Minnesota Supreme Court has held that the county attorney may appeal a denied adult reference motion, holding that he was an "aggrieved party" and that the denial was a final order. In re I.Q.S., 309 Minn. 78, 244 N.W.2d 30 (1976). The Rule contains no mention of reference orders and, indeed, purports to limit the county attorney's right to appeal only to "pretrial orders". Presumably under the statute the county attorney could be an "aggrieved person" who could appeal from a final disposition order as well. Finally, it is conceivable that a person other than the juvenile, the parents or the county attorney might be held to be an aggrieved person.

The Rule should be amended to conform with the statute and the existing case law.

Further, Rule 31.02 Subd. 2 which governs the procedure for an appeal by the conty attorney permits only a five (5) day period within which to file notice of appeal. This substantially abridges the time limitation of Minn. Stat. §260.291 Subd. 1 which permits 30 days to file an appeal.

Rule 32. Reference of Delinquency Matters.

We support the positions expressed in the Minority Report.

Additionally, Rule 32.03 which permits the reference report to be filed only 48 hours before a scheduled hearing does not give either the county attorney or the juvenile's counsel adequate opportunity to prepare for the hearing, to subpoena possible additional witnesses referred to, to consult with experts on the findings, or otherwise to investigate new information which may be contained in the report.

The Rule is deficient in that it does not explicitly permit waiver of the reference hearing nor set forth the procedures or safeguards which should be followed in the event a child decides to waive the reference hearing. In State v. Houff 30 Minn. 3, 243 N.W.2d 129 (1976) the Minnesota Supreme Court specifically recognized a juvenile's right to waive a hearing on the reference issue. Although Houff was decided under the old Juvenile Rules, the basic principle involved, i.e. that a juvenile can waive any right conferred under the Juvenile Code, is still statutorily expressed in Minn. Stat. §260.155, Subd. 8 . Standards for waiver, at least as elaborate as those standards for the acceptance of a plea (see Rule 21.03) should be drafted and incorporated in the Rule.

Minn. Stat. §260.125 Subd. 2(a)-(d) sets forth five findings which the court must make before ordering reference, that the petition is properly filed; that notice has been properly given; that a hearing has been properly held; that probable cause has been found; and that the juvenile is not suitable to treatment or he or she endangers public safety. Rule 32.05 omits the first three findings in its statement of "necessary finding". It should be amended to set forth all the statutory requirements.

Rule 32.08 provides that once an order referring a violation is filed, the juvenile court jurisdiction terminates "within 30 days" or before if the prosecuting authority files notice of intent to prosecute. Minn. Stat. §260.125 Subd. 1 appears to permit the prosecuting authority a maximum 90 days within which to file the notice of intent to prosecute. To the extent that the Rule could be construed to shorten this time period, it should be amended to conform with the statute.

Rule 33. Proceedings when Child is Believed to be Mentally Ill or Mentally Deficient.

When contrasted to its counterpart in the Criminal Rules (Minn. R. Crim. P. 20), Rule 33 is exceedingly brief. It is deficient in at least one major respect: it does not specifically permit the court to order its own psychological or medical evaluation, even though it does permit a "hearing" on the issue. Of course the juvenile could retain his or her own psychiatric expert on competency, or could consent to an examination by a court appointed psychiatrist. However, particularly if the charges against a juvenile are serious, the court should not be forced to rely upon psychiatric evidence available solely through the

accused.

Rule 33.03 requires the court to dismiss the petition unless jeopardy has attached. The Rule should not require such dismissal, which could create problems under the statutes of limitation.

The Rule should also contain a provision by means of which the case would be referred automatically for a possible finding of dependency to insure that the mental illness or deficiency will receive proper medical attention.

Rule 34. Availability of Juvenile Court Records.

We support the philosophy expressed in the Minority Report. However, we believe that the county attorney should be permitted access to such records until the juvenile reaches age 23, the age at which juvenile adjudications cease to be relevant for Sentencing Guidelines purposes.

Rule 36. Juvenile Traffic Offender.

Rule 36.02, Subd. 5 provides that a juvenile traffic offender may only be detained in a shelter care facility. There is no statutory basis for this limitation. Minn. Stat. §260.172 Subd. 4(a) permits the detention in a secure facility of one who has allegedly committed an act which would constitute a violation of state law or local ordinance if he were an adult. The statute is not limited to delinquent violations and therefore includes traffic violations. The language "except that the child may only be detained in a shelter care facility" should be deleted.