District Court of Minnesota

EIGHTH JUDICIAL DISTRICT

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December 15, 2004

The Honorable Kathleen A. Blatz
Chief Justice
Minnesota Supreme Court
25 Rev. Dr. Martin Luther King Blvd.
St. Paul, MN 55102

Re: Juvenile Delinquency Rules Committee Final Report

Dear Chief Justice Blatz:

The Juvenile Delinquency Rules Committee convened several times in 2004 to review the rules in light of recent cases decided by the Supreme Court and Court of Appeals, as well as suggestions received from the public. Enclosed please find the Juvenile Delinquency Rules Committee Final Report for 2004.

The majority of the changes recommended by the committee are technical in nature. These technical changes are summarized on page one of the report.

The committee received requests to review the rules regarding parental access to juvenile records, the court process during appeals of EJJ and certification cases, and the minor differences in the public safety standards enumerated in Rules 18.06, subd. 3; 19.05 and Minn. Stat. § 260B.125, subd. 4. These issues were reviewed and the committee made recommendations to clarify these issues.

Two appellate decisions required review of the EJJ rules. The committee recommends changes to the rules to conform to case law.

The recommendations in this report are not likely to be controversial or negatively impact the judicial system. Therefore, we recommend that the Court solicit public comment, but it is not likely that a public hearing will be necessary. If the proposed modifications are approved, we recommend that they become effective August 1, 2005.

Thank you for the opportunity to work with such a talented and dedicated group of people.

Cordially,

Kathryn N. Smith
Chair, Juvenile Delinquency Rules Committee

Enclosure

REPORT AND PROPOSED AMENDMENTS TO THE MINNESOTA RULES OF JUVENILE DELINQUENCY PROCEDURE

MINNESOTA SUPREME COURT
JUVENILE DELINQUENCY RULES COMMITTEE

CX-01-926

December 15, 2004

Honorable Kathryn N. Smith, Chair

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Honorable Helen Meyer
Supreme Court Liaison

Kelly Lyn Mitchell
Staff Attorney

* Term ended June 30, 2004.

INTRODUCTION

The Juvenile Delinquency Rules Committee met in 2004 pursuant to the Minnesota Supreme Court's fourfold charge to:

1. Review case law relating to the Juvenile Delinquency Rules;
2. Review federal and state statutes relating to the Juvenile Delinquency Rules;
3. Monitor implementation of and consider requests for revision to the Juvenile Delinquency Rules; and
4. Submit to the Supreme Court recommendations for necessary revision of the Juvenile Delinquency Rules.

The following report summarizes the issues considered by the Committee and the recommended changes to the Juvenile Delinquency Rules of Procedure. The report is organized by topic.

SUMMARY OF TECHNICAL AMENDMENTS

The following recommended changes are not intended to alter the meaning or application of the rules:

- In 2003, the Court ordered the separation of the juvenile delinquency and juvenile protection procedural rules, and renamed Rules 1-31 the "Minnesota Rules of Juvenile Delinquency Procedure." To conform to this change, all citations to the delinquency rules contained within the comments have been updated from "Minn. R. Juv. P." to "Minn. R. Juv. Del. P." No changes were necessary within the text of the rules.

- Rule 6.01 defines the phrase "charging document" as a petition, tab charge, or citation. However, most subsequent rules use the term "petition." The Committee has recommended changing "petition" to "charging document" in those rules in which the term should encompass all three types of charging instruments.

- In 2003, the Committee added statements to all comments containing the phrase "child's counsel" to reference Rule 1.01, which defines the phrase to include the child who is proceeding pro se. However, the Committee overlooked the fact that, in the same year, it added the phrase "child's counsel" to Rule 23, but did not add a similar comment. The Committee has corrected that oversight by recommending the addition of the comment to Rule 23.

- It was noted that some text was inadvertently dropped from the 8th paragraph of the comment to Rule 5, so it is recommended that the text be reinserted.

SUMMARY OF SUBSTANTIVE AMENDMENTS

PARENTAL ACCESS TO JUVENILE RECORDS

The committee was requested to clarify the extent of parental access to juvenile delinquency records. Currently, Minn. Stat § 260B.171, subd. 1 provides, "[u]nless otherwise provided by law, all court records shall be open at all reasonable times to the inspection of any child to whom the records relate, and to the child's parent and guardian." In contrast, the rules provide only for access by the parent's *counsel* (see Rule 30.02, subd. 2), which has resulted in some confusion. The committee noted that the original drafters of the rules may have *assumed* that parents would have access to their children's records, and thus only included the reference to parent's counsel to clarify that they may *also* have access. However, because some rules are explicitly very restrictive (see, e.g., Rule 18.04, subd. 4, which limits disclosure of the certification study to the prosecuting attorney and child's counsel), the committee could see how this assumption might not be clearly understood. After discussion, the committee agreed that as a general policy, parents should have access to all juvenile records, with some limitations explicitly articulated. Further, they agreed that in the rare case in which there is a valid reason to restrict parent access, the judge should have the ability to impose some restrictions on copying and release of the records. Thus, to clarify that parents *do* have access to their children's juvenile records, the committee has proposed amending Rule 1.01 to state that the phrase "counsel for the parent(s), legal guardian, or legal custodian" includes the parent, legal guardian, or legal custodian who is proceeding pro se, which brings parents under Rule 30.02, subd. 2 as it is currently written. In conjunction with this change, the committee also recommends: 1) adding a comment citing Rule 1.01 to all rules that contain the phrase "counsel for the parent(s), legal guardian, or legal custodian;" 2) amending Rules 15, 18, 19, and 20 to clarify that the court administrator cannot release the predisposition report, certification study, EJJ study, or competency examination to persons other than those listed in the rules without a court order; 3) amending Rule 30.02, subd. 2 to allow the court to restrict the copying and release of juvenile records by parents and their counsel; and 4) amending Rule 30.02, subd. 3 to highlight the rules that impose special restrictions on access to juvenile records.

EXPEDITED APPEALS FOR EJJ AND CERTIFICATION DETERMINATIONS

The committee was requested to consider amending the certification rule to allow a case to proceed to trial in a presumptive certification case when the decision to certify is on appeal. The rationale for the requested change was that regardless of the outcome of the appeal, the case would proceed to jury trial, so it would save judicial resources to eliminate the stay of proceedings up to the point of imposition of sentence or disposition. However, the committee identified several potential constitutional and procedural issues associated with the proposal. Members noted that another possible resolution to the issue would be to expedite the certification determination appeal, and identified EJJ determination appeals as another potential area for improvement. The committee consulted with SCAO's Research and Evaluation Unit and found that over the past 6 years, the average time from filing to appellate disposition of EJJ and certification determination appeals was nearly 241 days. To shorten this time period, the committee has recommended amending Rule 21.02, subd. 2 to set forth a shorter briefing

schedule. Additionally, because these appeals are infrequent (just 3 to 4 per year over the past 6 years), the committee requested that the Court of Appeals consider expediting issuance of its decision. The Court discussed the issue, and determined that due to the low number of cases, it would be possible to expedite these cases so that the decision would be issued within 60 days rather than 90. Proposed Rule 21.07 would codify the new expedited timing standard, and minor amendments have been proposed for Rules 18 and 19 to refer to the new briefing and timing standards in Rule 21.

JAIL CREDIT FOR REVOKED EJJ DISPOSITIONS

The committee reviewed the recent decision in State v. Garcia, No. A03-483 (Minn. July 15, 2004), which held that Minn. Stat. § 260B.130, subd. 5 (2002) violates the equal protection guarantees of the Minnesota Constitution by denying jail credit to extended jurisdiction juveniles for time spent in custody in juvenile facilities where the conditions and limitations are the functional equivalent of a jail, workhouse, or correctional facility. The committee has proposed inserting a new subsection in Rule 19.11, subd. 3 to require that jail credit be calculated for time spent in custody at such juvenile facilities, and to clarify that it must be deducted from any adult sentence imposed after revocation of extended jurisdiction juvenile status.

PUBLIC SAFETY STANDARDS

The committee was requested to review the public safety standards in Minn. Stat. § 260B.125, subd. 4, Rule 18.06, subd. 3, and Rule 19.05 to determine if the differences in wording create substantively different standards. The committee noted that there was no intent to create substantively differences, and has recommended amending Rule 18.06, subd. 3(E) and (F) to make the rules and statute uniform. In addition, the committee has recommended adding a comment to Rule 19 to explain that the public safety factors in Rule 19.05 mirror the statute.

REVOCATION PROCEEDINGS IN EXTENDED JURISDICTION JUVENILE CASES

In 2003, in response to a request by the Court of Appeals in State v. B.Y., 659 N.W.2d 763 (Minn. 2003), the committee recommended amending Rule 19 to incorporate the Austin[1] factors into the decision to revoke the stayed prison sentence of an EJJ probationer. However, the committee did not include a comment explaining why this was done, and has therefore recommended the addition of an explanatory comment to Rule 19.

Respectfully Submitted,

JUVENILE DELINQUENCY
RULES COMMITTEE

[1] From State v. Austin, 295 N.W.2d 246 (Minn. 1980).

PROPOSED AMENDMENTS TO THE RULES OF JUVENILE DELINQUENCY PROCEDURE

Note: Throughout these proposals, deletions are indicated by a line drawn through the words, and additions are underlined. A double underline indicates that the proposed text, if approved by the Court, should also be underlined in the final publication.

1. Rule 1. Scope, Application and General Purpose

Amend Rule 1.01 as follows:

Rule 1.01 Scope and Application

Rules 1 through 31 govern the procedure in the juvenile courts of Minnesota for all delinquency matters as defined by Minnesota Statutes, section 260B.007, subdivision 6, juvenile petty matters as defined by Minnesota Statutes, section 260B.007, subdivision 16 and juvenile traffic matters as defined by Minnesota Statutes, section 260B.225. Procedures for juvenile traffic and petty matters are governed by Rule 17.

Where these rules require giving notice to a child, notice shall also be given to the child's counsel if the child is represented. Reference in these rules to "child's counsel" includes the child who is proceeding pro se. Reference in these rules to "counsel for the parent(s), legal guardian, or legal custodian" includes the parent, legal guardian, or legal custodian who is proceeding pro se.

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

In cases involving an Indian child, which may be governed by the Indian Child Welfare Act, 25 U.S.C.A. Chapter 21, sections 1901-1963, these rules shall be construed to be consistent with that act. Where the Minnesota Indian Family Preservation Act, Minnesota Statutes, sections 260.751 through 260.835 applies, these rules shall be construed to be consistent with that act.

2. Rule 1 Comment

Amend the first paragraph of the comment to Rule 1 as follows:

Minn. R. Juv. Del. P. 1.02 is based upon Minnesota Statutes, section 260B.001, subd. 2(2002).

3. Rule 2 Comment

Amend the comment to Rule 2 as follows:

Minn. R. Juv. Del. P. 2.01 allows persons authorized by statute to attend juvenile court proceedings. They include the public, in cases where a juvenile over age 16 is alleged to have committed a felony, and victims. The public is also entitled to be present during a juvenile certification hearing where a juvenile over age 16 is alleged to have committed a felony, except that the court may exclude the public from portions of a certification hearing to discuss psychological material or other evidence that would not be accessible to the public in an adult proceeding. Minnesota Statutes, section 260B.163, subd. 1(c) (2002). The statute does not currently permit exclusion when similar material is being presented in an extended jurisdiction juvenile proceeding. This may simply be an oversight. See also Minnesota Statutes, section 609.115, subd. 6 (1994).

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

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

Minn. R. Juv. Del. P. 2.05 requires full disclosure by the court to all counsel on the record of any attempted ex-parte communication. Juvenile court has historically been less

formal and more casual than other court proceedings. As a result, lawyers, probation and court services personnel, law enforcement, victims, and relatives of the child have sometimes attempted and succeeded in having ex-parte contact with the juvenile court judge. As the sanctions for delinquency become more severe, due process safeguards become more imperative.

4. Rule 3. Right to Counsel

Amend Rule 3.07, subd. 1 as follows:

Subdivision 1. Right of Parent(s), Legal Guardian(s) or Legal Custodian(s). The parent(s), legal guardian(s) or legal custodian(s) of a child who is the subject of a delinquency proceeding have the right to assistance of counsel after the court has found that the allegations of the ~~petition~~charging document have been proved. The court has discretion to appoint an attorney to represent the parent(s), legal guardian(s) or legal custodian(s) at public expense if they are financially unable to obtain counsel in any other case in which the court finds such appointment is desirable.

5. Rule 3 Comment

Amend the first through fourth paragraphs of the comment to Rule 3 as follows:

Minn. R. Juv Del. P. 3 prescribes the general requirements for appointment of counsel for a juvenile. In re Gault, 387 U.S. 1 (1967); Minnesota Statutes, section 260B.163, subd. 4 (2002). The right to counsel at public expense does not necessarily include the right to representation by a public defender. The right to representation by a public defender is governed by Minnesota Statutes, chapter 611.

Minn. R. Juv Del. P. 3.01 provides that the right to counsel attaches no later than the child's first appearance in juvenile court. See Minnesota Statutes, section 611.262 (2002). Whether counsel is appointed by the court or retained by the child or the child's parents, the attorney must act solely as counsel for the child. American Bar Association, Juvenile Justice Standards Relating to Counsel for Private Parties (1980). While it is certainly appropriate for an attorney representing a child to consult with the parents whose custodial interest in the child potentially may be affected by court intervention, it is essential

that counsel conduct an initial interview with the child privately and outside of the presence of the parents. Following the initial private consultation, if the child affirmatively wants his or her parent(s) to be present, they may be present. The attorney may then consult with such other persons as the attorney deems necessary or appropriate. However, the child retains a right to consult privately with the attorney at any time, and either the child or the attorney may excuse the parents in order to speak privately and confidentially.

Minn. R. Juv. Del. P. 3.02 provides for the appointment of counsel for juveniles in delinquency proceedings. A parent may not represent a child unless he or she is an attorney. In Gideon v. Wainwright, 372 U.S. 335 (1963), the U.S. Supreme Court held that the Sixth Amendment's guarantee of counsel applied to state felony criminal proceedings. In In re Gault, the Supreme Court extended to juveniles the constitutional right to counsel in state delinquency proceedings. Minnesota Statutes, section 260B.163, subd. 4 (2002) expands the right to counsel and requires that an attorney shall be appointed in any proceeding in which a child is charged with a felony or gross misdemeanor.

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

Amend the sixth paragraph of the comment to Rule 3 as follows:

Minn. R. Juv. Del. P. 3.02, subd. 2 requires a court to appoint counsel for a child charged with a misdemeanor unless that child affirmatively waives counsel as provided in Minn. R. Juv. Del. P. 3.04. Minn. R. Juv. Del. P. 3.02, subd. 3 requires the appointment of counsel or standby counsel in any proceeding in which out-of-home placement is proposed, and further limits those cases in which a child may waive the assistance of

counsel without the appointment of standby counsel. In Argersinger v. Hamlin, 407 U.S. 25, 37 (1972), the Court held that "absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor or felony unless he was represented by counsel." In Scott v. Illinois, 440 U.S. 367 (1979), the Court clarified any ambiguity when it held that in misdemeanor proceedings, the sentence the trial judge actually imposed, i.e. whether incarceration was ordered, rather than the one authorized by the statute, determined whether counsel must be appointed for the indigent.

Amend the eighth through last paragraphs of the comment to Rule 3 as follows:

At the very least, Minn. R. Juv. Del. P. 3.02, subd. 3 places the prosecution and court on notice that out-of-home placement may not occur unless counsel or standby counsel is appointed. For example, a child appearing on a third alcohol offense faces a dispositional possibility of out-of-home placement, but cannot be placed out of the home if the child is not represented by counsel unless the child is given the opportunity to withdraw the plea or obtain a new trial. See Minn. R. Juv. Del. P. 17.02. The prosecutor should indicate, either on the petition or through a statement on the record, whether out-of-home placement will be proposed. Obviously, basing the initial decision to appoint counsel on the eventual sentence poses severe practical and administrative problems. It may be very difficult for a judge to anticipate what the eventual sentence likely would be without prejudging the child or prejudicing the right to a fair and impartial trial. Minn. R. Juv. Del. P. 3.02, subd. 3 also provides that a child retains an absolute right to withdraw any plea obtained without the assistance of counsel or to obtain a new trial if adjudicated without the assistance of counsel, if that adjudication provides the underlying predicate for an out-of-home placement. See, e.g., In re D.S.S., 506 N.W.2d 650, 655 (Minn. Ct. App. 1993) ("The cumulative history of uncounseled admissions resulting after an inadequate advisory of the right to counsel constitutes a manifest injustice"). Appointing counsel solely at disposition is inadequate to assure the validity of the underlying offenses on which such placement is based. Of course, routine appointment of counsel in all cases would readily avoid any such dilemma.

Minnesota Statutes, section 260B.007, subd. 16 defines "juvenile petty offenses," and converts most offenses that would be misdemeanors if committed by an adult into petty

offenses. Minn. R. Juv. Del. P. 3.02, subd. 5 and 17.02 explain when a juvenile petty offender is entitled to court-appointed counsel. If a child is charged as a juvenile petty offender, the child or the child's parents may retain and be represented by private counsel, but the child does not have a right to the appointment of a public defender or other counsel at public expense. The denial of access to court-appointed counsel is based on the limited dispositions that the juvenile court may impose on juvenile petty offenders. Minnesota Statutes, section 260B.235, subd. 4 (2002). However, children who are charged with a third or subsequent juvenile alcohol or controlled substance offense are subject to out-of-home placement and therefore have a right to court-appointed counsel, despite their status as juvenile petty offenders. If the court is authorized to impose a disposition that includes out-of-home placement, then the provisions of Minn. R. Juv. Del. P. 3.02, subd. 5 and 17.02 are applicable and provide the child a right to counsel at public expense.

Minn. R. Juv. Del. P. 3.02, subd. 6 is an exception to the prohibition of appointment of counsel at public expense for a juvenile traffic or juvenile petty offender. If such a child is detained, at any hearing to determine if continued detention is necessary, the child is entitled to court-appointed counsel if unrepresented because substantial liberty rights are at issue.

Minn. R. Juv. Del. P. 3.02, subd. 7 is an exception to the prohibition of appointment of counsel at public expense for a juvenile traffic or juvenile petty offender. As soon as any child is alleged to be incompetent to proceed, that child has a right to be represented by an attorney at public expense for the proceeding to determine whether the child is competent to proceed. Substantial liberty rights are at issue in a competency proceeding. A finding of incompetency is a basis for a Child in Need of Protection or Services adjudication and possible out-of-home placement. Minnesota Statutes, sections 260C.007, subd. 6(15) and 260C.201 (2002). See also Minn. R. Juv. Del. P. 20.01. Because out-of-home placement is a possibility, the child is entitled to court-appointed counsel.

Minn. R. Juv. Del. P. 3.03 regarding advising children of the perils of dual representation is patterned after Minn. R. Crim. P. 17.03, subd. 5.

Minn. R. Juv. Del. P. 3.04 prescribes the circumstances under which a child charged with an offense may waive counsel. The validity of relinquishing a constitutional right is determined by assessing whether there was a "knowing, intelligent, and voluntary

waiver" under the "totality of the circumstances." See, e.g., Fare v. Michael C., 442 U.S. 707 (1979); Johnson v. Zerbst, 304 U.S. 458 (1938) (waiver of counsel); In re M.D.S., 345 N.W.2d 723 (Minn. 1984); State v. Nunn, 297 N.W.2d 752 (Minn. 1980); In re L.R.B., 373 N.W.2d 334 (Minn. Ct. App. 1985). The judicial position that a young minor can "knowingly and intelligently" waive constitutional rights is consistent with the legislature's judgment that a youth can make an informed waiver decision without parental concurrence or consultation with an attorney. Minnesota Statutes, section 260B.163, subd. 10 (2002) ("Waiver of any right ... must be an express waiver intelligently made by the child after the child has been fully and effectively informed of the right being waived").

While recognizing a right to waive counsel and proceed pro se, Minn. R. Juv. Del. P. 3.02 requires juvenile courts to appoint standby counsel to assist a child charged with a felony or gross misdemeanor, or where out-of-home placement is proposed, and to provide temporary counsel to consult with a child prior to any waiver in other types of cases. See, e.g., State v. Rubin, 409 N.W.2d 504, 506 (Minn. 1987) ("[A] trial court may not accept a guilty plea to a felony or gross misdemeanor charge made by an unrepresented defendant if the defendant has not consulted with counsel about waiving counsel and pleading guilty"); Jones, 266 N.W.2d 706 (standby counsel available to and did consult with defendant throughout proceedings and participated occasionally on defendant's behalf); Burt, 256 N.W.2d at 635 ("One way for a trial court to help ensure that a defendant's waiver of counsel is knowing and intelligent would be to provide a lawyer to consult with the defendant concerning his proposed waiver").

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

consultation and full discussion has occurred.

To determine whether a child "knowingly, intelligently, and voluntarily" waived the right to counsel, Minn. R. Juv. Del. P. 3.04, subd. 1 requires the court to look at the "totality of the circumstances," which includes but is not limited to the child's age, maturity, intelligence, education, experience, and ability to comprehend and the presence and competence of the child's parent(s), legal guardian or legal custodian. In addition, the court shall decide whether the child understands the nature of the charges and the proceedings, the potential disposition that may be imposed, and that admissions or findings of delinquency may be valid even without the presence of counsel and may result in more severe sentences if the child re-offends and appears again in juvenile court or in criminal court. United States v. Nichols, 511 U.S. 738 (1994); United States v. Johnson, 28 F.3d 151 (D.C. Cir. 1994) (use of prior juvenile convictions to enhance adult sentence). The court shall make findings and conclusions on the record as to why it accepts the child's waiver or appoints standby counsel to assist a juvenile who purports to waive counsel.

Even though a child initially may waive counsel, the child continues to have the right to counsel at all further stages of the proceeding. Minn. R. Juv. Del. P. 3.05 requires that at each subsequent court appearance at which a child appears without counsel, the court shall again determine on the record whether or not the child desires to exercise the right to counsel.

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

Minn. R. Juv. Del. P. 3.06, subd. 2 provides that if the parent(s) of a child can afford to retain counsel but have not done so and the child cannot otherwise afford to retain counsel, then the court shall appoint counsel for the child. When parents can afford to retain counsel but do not do so and counsel is appointed for the child at public expense, in the exercise of its sound discretion, the court may order reimbursement for the expenses and attorney's fees expended on behalf of the child. Minnesota Statutes, section 260B.331, subd. 5 (2002) ("[T]he court may inquire into the ability of the parents to pay for such counsel's services and, after giving the parents a reasonable opportunity to be heard, may order the

parents to pay attorneys fees"). See, e.g., In re M.S.M., 387 N.W.2d 194, 200 (Minn. Ct. App. 1986).

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

6. Rule 4 Comment

Amend the comment to Rule 4 as follows:

If the child fails to appear in response to a summons without reasonable cause, then the court may issue a warrant to take the child into immediate custody pursuant to Minn. R. Juv. Del. P. 4.03, subd. 2. See Minnesota Statutes, section 260B.154 (2002). Probable cause is required for every warrant issued. Before the court may issue a warrant, it shall make a finding of probable cause based on the contents of the ~~petition~~charging document, any supporting affidavits or sworn supplemental testimony to believe that the child committed an act governed by Minnesota Statutes, section 260B.007, subds. 6 or 16, or Minnesota Statutes, section 260B.225. In addition, the court must also find either that the summons was personally served on the child and the child failed to appear, that service will be ineffectual, or, for a delinquent child or child alleged to be delinquent, that there is a substantial likelihood that the child will not respond to a summons, or that the child or others are in danger of imminent harm. Minnesota Statutes, section 260B.154 (2002).

Minn. R. Juv. Del. P. 4.03, subd. 4 prescribes the contents of the warrant. When a child is taken into custody, a detention hearing shall commence pursuant to Minn. R. Juv. Del. P. 5.07 within thirty-six (36) hours, excluding Saturdays, Sundays, and holidays, or within twenty-four hours, excluding Saturdays, Sundays, and holidays, if the child is detained in an adult jail or municipal lockup.

Under Minn. R. Juv. Del. P. 4.03, subd. 5, a warrant may be executed only by a peace officer. Limitations on the manner of execution are the same as those set out in Minn. R. Crim. P. 3.03, subd. 3 for adults where the offense charged is a misdemeanor or non-criminal offense. The minor nature of misdemeanors, juvenile petty and juvenile

traffic offenses should not ordinarily justify taking a child into immediate custody during the proscribed period of time.

7. Rule 5 Comment

Amend the third through last paragraphs of the comment to Rule 5 as follows:

Minnesota Statutes, section 260B.154 (2002) authorizes the court to issue a warrant for immediate custody for a child who fails to appear in court in response to a summons. Minnesota Statutes, section 260B.175 (2002) authorizes a child to be taken into custody: 1) when the child has failed to obey a summons or subpoena; 2) pursuant to the laws of arrest; or 3) by a peace officer or probation or parole officer when it is reasonably believed that the child has violated the terms of probation, parole, or other field supervision. Minn. R. Juv. Del. P. 5.07 defines the circumstances under which a child is subject to continuing physical restraints. Minnesota Statutes, section 260B.176 (2002) authorizes a detention hearing and provides the statutory framework that governs this rule.

Minn. R. Juv. Del. P. 5.02, subd. 3 defines the places in which a child's liberty is restricted. A child's liberty is restricted when the child is placed at home, but his or her physical mobility is limited by electronic home monitoring, or house arrest with substantial liberty restrictions. In addition, the provisions of this rule apply whenever, prior to disposition, the child is placed outside of the home, whether or not the placement is in a secure facility. Thus, a child's liberty is restricted when placed in a foster care (Minnesota Statutes, section 260B.007, subd. 7 (2002)) or shelter care facility (Minnesota Statutes, section 260B.007, subd. 15 (2002)), in a detoxification or mental health treatment facility, in a secure detention facility (Minnesota Statutes, section 260B.007, subd. 14 (2002)), in an adult jail or lock-up, or other place of detention. A child who is returned to an out-of-home placement which was made voluntarily or pursuant to a CHIPS proceeding is not "detained" for the purposes of this rule.

Minn. R. Juv Del.. P. 5.03, subd. 1 establishes a general presumption in favor of unconditional release for all children taken into custody. Minn. R. Juv. Del. P. 5.03, subd. 2 provides some non-exclusive evidentiary guidelines by which detaining authorities can decide whether a child meets the criteria for detention. Under Minn. R. Juv. Del. P. 5.03, subd. 2, the detaining authority may detain a child if it believes or the court finds that the

child poses a danger to other people because the child is charged with a presumptive commitment to prison offense. The presumptive commitment to prison offenses are enumerated under Section V, Offense Severity Reference Table of the Minnesota Sentencing Guidelines. In addition, an inference the child poses a danger to others applies when the child uses a firearm in the commission of a felony pursuant to Minnesota Statutes, section 260B.125, subds. 3 and 4 (2002). However, detaining authorities should exercise individualized discretion. Moreover, detaining authorities ought not detain children who meet the evidentiary criteria if other, less restrictive alternatives would assure the child's subsequent court appearance, welfare, and public safety. The non-exclusive evidentiary criteria emphasize objective indicators that the child poses a danger to self or others, or would fail to return for court appearances. The list of criteria set out in Minn. R. Juv. Del. P. 5.03, subd. 2 are examples of factors which may justify pretrial detention. If a detained child does not meet any of the enumerated criteria, the detaining authority may justify detention only if a written report is filed stating objective and articulable reasons for detention. Minn. R. Juv. Del. P. 5.03, subd. 2.

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

Minn. R. Juv. Del. P. 5.04, subd. 3 is based upon Minnesota Statutes, section 260B.176, subd. 2 (2002). The statute provides for an extension of the time for a detention hearing for a child detained in an adult detention facility outside of a standard metropolitan statistical area county only under two circumstances: 1) where the adult facility in which the child is detained is located where conditions of distance to be traveled or other ground transportation do not allow for court appearances within 24 hours (with the delay not to exceed 48 hours); and 2) where "conditions of safety exist" including adverse life-threatening weather conditions which do not allow for reasonably safe travel. The time for appearance may be delayed until 24 hours after the time that conditions allow for reasonably safe travel. Minnesota Statutes, section 260B.176, subd. 2 (2002). See also 42

U.S.C.A., section 5633(a)(13) and (14) (1995). Even though the statute permits an extension of the time for a detention hearing in such circumstances, the extension may be granted only if the prosecuting attorney has filed a charging document within twenty-four (24) hours of the child being taken into custody, excluding Saturdays, Sundays and legal holidays. Minn. R. Juv. Del. P. 5.04, subd. 3(A). If the court determines after the detention hearing that the child should remain detained, the child shall be detained in an appropriate juvenile facility. Id. See also 42 U.S.C.A. section 5633(a)(14) (1995).

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

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

Minn. R. Juv. Del. P. 5.06, subd. 1 implements the provision of Minnesota Statutes, section 299C.10 (2002), which requires peace officers to take the fingerprints and photograph of a child taken into custody according to the laws of arrest, pursuant to Minnesota Statutes, section 260B.175, subd. 1(b) (2002). Any photograph taken of a child must be destroyed when the child reaches the age of 19 years. Minnesota Statutes, section 260B.171, subd. 5(c) (2002). Minn. R. Juv. Del. P. 5.06, subd. 2 implements the provisions of Minnesota Statutes, section 299C.10 (2002), which requires law enforcement personnel to take the fingerprints of all juveniles arrested or charged with felony- or gross misdemeanor-level offenses.

Minn. R. Juv. Del. P. 5.06, subd. 3 implements the policies of U.S. v. Wade, 388 U.S. 218 (1967) to provide the assistance of counsel to minimize the dangers of erroneous misidentification. See Feld, "Criminalizing Juvenile Justice: Rules of Procedure for the Juvenile Court," 62 Minn. L. Rev. 141, 209-16 (1984). Unlike the formalistic limitations imposed by Kirby v. Illinois, 406 U.S. 682 (1972), the rule recognizes that the dangers of unreliability, suggestibility, and error are inherent in all identification procedures. The rule attempts to balance the protection of a child from prejudicial misidentification with the State's interest in prompt investigation. A child who is in custody is entitled to have counsel present at a lineup, even prior to the filing of a delinquency petition, unless exigent circumstances exist and delay to provide counsel would unduly interfere with an expeditious investigation. Blue v. State, 558 P.2d 636 (Alaska 1977); People v. Jackson, 391 Mich. 323, 217 N.W.2d 22 (Mich. 1974); Commonwealth v. Richman, 238 Pa. Super. 413, 357 A.2d 585 (1976). Once an investigation proceeds beyond an immediate on-the-scene show-up,

and especially once the child is in custody, there are no compelling law enforcement exigencies that offset the dangers of prejudice to the child. Since youth in custody already have a Miranda right to counsel, 384 U.S. 436 (1966), the delay involved in securing counsel will be a matter of hours at most and if conditions require immediate identification without even minimal delay or if counsel cannot be present within reasonable time, such existent circumstances will justify proceeding without counsel. People v. Bustamante, 30 Cal 3d 88, 634 P.2d 927 (Cal. 1981).

Minn. R. Juv. Del. P. 5.07 implements Minnesota Statutes, section 629.725 (2002) by providing that, in addition to giving notice to the child, child's counsel, prosecuting attorney, child's parent(s), legal guardian or legal custodian and spouse of the child, the court administrator must make a reasonable and good faith effort to give notice of the time and place of the detention hearing to the victim if the child is charged with a crime of violence against a person or attempting a crime of violence against a person. If the victim is deceased or incapacitated, the victim's family must receive notice. If the victim is a minor, the victim's parent or guardian must receive notice. Minnesota Statutes, section 629.725 (2002). "Crime of violence" has the meaning given it in Minnesota Statutes, section 624.712, subd. 5 (2002), and also includes Minnesota Statutes, section 609.21, gross misdemeanor violations of Minnesota Statutes, section 609.224 (2002), and nonfelony violations of Minnesota Statutes, sections 518B.01 (2002), 609.2231 (2002), 609.3451 (2002), 609.748 (2002), and 609.749 (2002). Id.

8. Rule 6.04. Amendment

Amend Rule 6.04, subd. 1 as follows:

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

(A) before the introduction of evidence at the trial by motion of the prosecuting attorney; or

(B) after the commencement of the trial with consent of the child and prosecuting attorney; or

(C) after trial but before a finding that the allegations of the charging document have been proved, upon motion of the prosecuting attorney, if no additional or different offense is alleged and if substantial rights of the child are not prejudiced.

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

9. Rule 6.05. Probable Cause

Amend Rule 6.05, subd. 2 as follows:

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

(A) before the court may issue a warrant pursuant to Rule 4;

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

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

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

10. Rule 6 Comment

Amend the fourth through last paragraphs of the comment to Rule 6 as follows:

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

Minn. R. Juv. Del. P. 6.03, subd. 2 provides that a petition shall be signed by the prosecuting attorney before it is filed with the court. Minnesota Statutes, section 260B.141,

subd. 1 (2002) provides that any reputable person having knowledge of a child who is a resident of this state, who appears to be delinquent, may petition the juvenile court. Minn. R. Juv. Del. P. 6.03, subd. 3 sets forth the necessary contents of the petition.

11. Rule 7 Comment

Amend the comment to Rule 7 as follows:

Minn. R. Juv. Del. P. 7.04, subd. 1 (G) and Minn. R. Juv. Del. P. 3.03 regarding advising children of the perils of dual representation are patterned after Minn. R. Crim. P. 17.03, subd. 5.

12. Rule 10 Comment

Amend the comment to Rule 10 as follows:

Minn. R. Juv. Del. P. 10.02 is modeled after the Minn. R. Crim. P. 7.01. A suggested form for the notice to be provided by this rule is included in the appendix of forms, following these rules.

Minn. R. Juv. Del. P. 10.03 is modeled after Minn. R. Crim. P. 7.02 and would encompass the commonly referred to Spreigl notice derived from State v. Spreigl, 139 N.W.2d 167 (1965).

Minn. R. Juv. Del. P. 10.05, subd. 1(C)(5) provides that a child is not required to reveal prior offenses which might result in enhancement of pending enhanceable offenses. An example of an "enhanceable offense" is a pending misdemeanor fifth degree assault which could be amended to a gross misdemeanor under Minnesota Statutes, section 609.224, subd. 2 (2002) if the prosecutor knew, for instance, of the child's prior adjudication for misdemeanor assault against the same victim in another county.

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

13. Rule 11 Comment

Amend the comment to Rule 11 as follows:

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

14. Rule 12 Comment

Amend the comment to Rule 12 as follows:

When the same judge is assigned to determine the admissibility of evidence in a suppression hearing and the guilt of the juvenile in the same proceeding, the juvenile's basic right to a fair trial by an impartial tribunal with a determination of guilt based on admissible evidence may be compromised. E.g., In re J.P.L., 359 N.W.2d 622 (Minn. Ct. App. 1984). Continuances of trial beyond the time established by Minn. R. Juv. Del. P. 13.02 are not recommended. However, the child's right to a fair trial will justify a short continuance where the child seeks reassignment of the judge pursuant to Minn. R. Juv. Del. P. 22.

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

15. Rule 13 Comment

Amend the comment to Rule 13 as follows:

For children held in detention, Minn. R. Juv. Del. P. 13.02, subd. 1 requires that a trial be commenced within thirty (30) days from the date of the speedy trial demand unless good cause is shown why the trial should not be held within that time. If the trial has not commenced within the thirty (30) days and a continuance has not been granted upon a showing of good cause, the child shall be released subject to nonmonetary release conditions that the court may require. The trial must then commence within 60 days of the date of the demand for a speedy trial and not 60 days from the child's release.

For children not held in detention, Minn. R. Juv. Del. P. 13.02, subd. 2 provides that a trial shall be commenced within sixty (60) days from the date of a demand for a speedy trial unless good cause is shown why the trial should not be held within that time.

The trial may be postponed for good cause beyond the time limit upon request of the prosecuting attorney or the child's counsel or upon the court's initiative. Good cause for the delay does not include court calendar congestion unless exceptional circumstances exist. See McIntosh v. Davis, 441 N.W.2d 115 (Minn. 1989). A delay caused by witness unavailability is permitted when the delay is "neither lengthy nor unfairly prejudicial." In re Welfare of G.D., 473 N.W.2d 878 (Minn. Ct. App. 1991); see also State v. Terry, 295 N.W.2d 95 (Minn. 1980).

If the trial is not commenced within sixty (60) days from the date of the demand for a speedy trial and a continuance has not been granted for good cause, the ~~petition~~charging document shall be dismissed. It is within the trial court's discretion whether it is dismissed with prejudice. See Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972); State v. Kasper, 411 N.W.2d 182 (Minn. 1987); State v. Friberg, 435 N.W.2d 509 (Minn. 1989).

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

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

16. Rule 14.07. Termination of Agreement; Dismissal

Amend Rule 14.07 as follows:

Rule 14.07 Termination of Agreement; Dismissal

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

17. Rule 14 Comment

Amend the first and second paragraphs of the comment to Rule 14 as follows:

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

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

Amend the fourth through last paragraphs of the comment to Rule 14 as follows:

A continuance for dismissal or continuance without adjudication under Minn. R. Juv. Del. P. 15.05, subd. 4 are not the only options available for dealing with an alleged juvenile offender without formal process. Every county attorney is required to have a pretrial diversion program established for certain juveniles subject to juvenile court jurisdiction, as an alternative to formal adjudication. See Minnesota Statutes, section 388.24 (2002). With statutory pretrial diversion readily available for less serious juvenile offenders, presumably the use of continuance without adjudication and continuance for dismissal under these rules will become less common.

Minn. R. Juv. Del. P. 14 specifies the procedure to be followed when the child, child's counsel and prosecuting attorney agree to a continuance for dismissal. Rule 14.10 further provides that the court has the inherent authority to order a continuance for dismissal of its own volition without the agreement of the parties. In re Welfare of J.B.A., 581 N.W.2d 37 (Minn. Ct. App. 1998).

18. Rule 15. Delinquency Disposition

Amend Rule 15.03, subd. 4 as follows:

Subd. 4. Filing and Inspection of Reports. The person making the report shall file the report three (3) days prior to the time scheduled for the disposition hearing and the reports shall be available for inspection and copying by the child, the child's counsel, the prosecuting attorney and counsel for the parent(s), legal guardian or legal custodian of the child. The court administrator shall not otherwise disclose the report except by court order.

19. Rule 15 Comment

Amend the first through fourth paragraphs of the comment to Rule 15 as follows:

The disposition for a child who has been designated an extended jurisdiction juvenile is also governed by Minn. R. Juv. Del. P. 19.10.

Dispositional choices are enumerated in Minnesota Statutes, section 260B.198, subds. 1 and 2 (2002). Probation revocation proceedings for a child who has been designated an extended jurisdiction juvenile are governed by Minn. R. Juv. Del. P. 19.11.

Minn. R. Juv. Del. P. 15.02, subd. 3 is intended to address the deficiency noted by various appellate decisions that the juvenile rules do not specify a sanction for violation of the time limits in this rule. See In re Welfare of C.T.T., 464 N.W.2d 751, 753 (Minn. Ct. App. 1991) pet. for rev. denied (Minn. Mar. 15, 1991); In re Welfare of J.D.K., 449 N.W.2d 194, 196 (Minn. Ct. App. 1989).

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

Amend the ninth and tenth paragraphs of the comment to Rule 15 as follows:

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

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

Amend the thirteenth through fifteenth paragraphs of the comment to Rule 15 as follows:

Minnesota Statutes, section 260B.198, subd. 1 (2002) requires written findings on disposition in every case. Although this statute seemingly invades the province of the judiciary to govern its own procedures. Minn. R. Juv. Del. P. 15.05, subd. 2(A) reiterates the statutory principle.

Minn. R. Juv. Del. P. 15.05, subd. 2(B) recites some of the general principles

relating to dispositions that have developed under Minnesota law.

a. The content of Minn. R. Juv. Del. P. 15.05, subd. 2(B) is largely derived from Minnesota Statutes, section 260B.001, subd. 2 (2002); Minnesota Statutes, section 260B.198, subd. 1 (2002); In re Welfare of A.R.W. & Y.C.W., 268 N.W.2d 414, 417 (Minn. 1978) cert. denied 439 U.S. 989 (1978); In re Welfare of D.S.F., 416 N.W.2d 772 (Minn. Ct. App. 1987) pet. for rev. denied (Minn. Feb. 17, 1988); and In re Welfare of L.K.W., 372 N.W.2d 392 (Minn. Ct. App. 1985). See also Institute of Judicial Administration-American Bar Association, Juvenile Justice Standards: Standards Relating to Dispositions (1980). This rule does not create any substantive standards or limit the development of the law but is intended to assist the court when choosing a disposition by focusing on those standards that are already part of established Minnesota law. The court is not required to make findings on each of these factors in every case, although such findings may be helpful in contentious cases.

Amend the eighteenth paragraph of the comment to Rule 15 as follows:

Minn. R. Juv. Del. P. 15.05, subd. 3 provides that a dispositional order that transfers legal custody of the child under Minnesota Statutes, section 260B.198, subd. 1(c) (2002) shall be for a specified length of time. See Minnesota Statutes, section 260B.198, subd. 9 (2002).

Amend the twentieth through twenty-fifth paragraphs of the comment to Rule 15 as follows:

"Withholding of adjudication" was redesignated as "continuance without adjudication" to conform with the statutory language of Minnesota Statutes, section 260.185, subd. 3 (1994). Continuance without adjudication is now authorized by Minnesota Statutes, section 260B.198, subd. 7 (2002). The court must find that the allegations of the ~~petition~~charging document have been proved before it can continue a case without adjudication. Id. The court may not grant a continuance without adjudication in an extended juvenile jurisdiction proceeding. Id.

Continuance without adjudication (or withholding of adjudication) has a material effect on a child's juvenile record. Prior to 1983, the Minnesota Sentencing Guidelines

assigned one criminal history point for every two felony-level "juvenile adjudications." See Minnesota Sentencing Guidelines II.B.4 (1982). In State v. Peterson, 331 N.W.2d 483 (Minn. 1983), the defendant claimed that it was error to use juvenile offenses for which there had been findings but no adjudication when calculating his criminal history score under the sentencing guidelines. The supreme court did not reach the defendant's argument but suggested that the Sentencing Guidelines Commission amend the guidelines to avoid the issue raised by defendant. Id. at 486. The guidelines were subsequently amended in 1983 to assign one criminal history point for every two felony-level offenses "committed and prosecuted as a juvenile", provided the juvenile court made findings pursuant to an admission or trial. Minnesota Sentencing Guidelines II.B.4 (2002). Because Minnesota Statutes, section 260B.198, subd. 7 requires a finding that the juvenile committed the offense alleged in the ~~petition~~charging document before the court may continue the case without an adjudication, which finding satisfies the requirements of the sentencing guidelines for counting a juvenile offense in the criminal history score, a continuance without adjudication (or withholding of adjudication) will not exclude the juvenile offense from a subsequent criminal history score. See John O. Sonsteng, et. al. 12 Minnesota Practice at 215 (1997). Continuance without adjudication may prevent the operation of some statutes which still require that the child be adjudicated delinquent. See, e.g., Minnesota Statutes, section 609.117, subd. 1(3) (2002) (provision of biological specimens for DNA analysis).

A continuance without adjudication or continuance for dismissal under Minn. R. Juv. P. 14 are not the only options available for dealing with an alleged juvenile offender without formal process. Every county attorney should have a pretrial diversion program established for certain juveniles subject to juvenile court jurisdiction, as an alternative to formal adjudication. See Minnesota Statutes, section 388.24 (2002). With statutory pretrial diversion readily available for less serious juvenile offenders, presumably the use of continuance without adjudication and continuance for dismissal under these rules will become less common.

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

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

opportunity to contest the proposed modification before it is imposed.

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

Amend the twenty-eighth paragraph of the comment to Rule 15 as follows:

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

Add a new twenty-ninth paragraph to the comment to Rule 15 as follows:

Reference in this rule to "counsel for the parent(s), legal guardian, or legal custodian" includes the parent, legal guardian, or legal custodian who is proceeding pro se. Minn. R. Juv. Del. P. 1.01.

20. Rule 16. Post-Trial Motions

Amend the title to Rule 16.02 as follows:

Rule 16.02 Motion to Vacate the Finding that the Allegations of the ~~Petition or~~ Charging Document are Proved

21. Rule 16 Comment

Amend the first two paragraphs of the comment to Rule 16 as follows:

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

Minn. R. Juv. Del. P. 16.01, subd. 3 provides that notice of a motion for a new trial shall be served within fifteen (15) days after the finding that the allegations of the

charging document are proved, except for a motion for new trial based on the grounds of new evidence. Minnesota Statutes, section 260B.411 (2002) provides for a different time for filing a motion for new trial which is premised on the discovery of new evidence. There, a child must bring a motion for new trial based on new evidence within fifteen (15) days of the filing of the court's order for adjudication and disposition. Id. Motions for new trial brought on other grounds must be brought within fifteen (15) days after the finding that the allegations of the charging document are proved as provided by this rule. Minn. R. Juv. Del. P. 16.01, subd. 3.

22. Rule 17 Comment

Amend the fourth paragraph of the comment to Rule 17 as follows:

This definition of juvenile petty offense applied to crimes committed on or after August 1, 1996. 1996 Minn. Laws Ch. 408, Art. 6, Sec. 13. Minn. R. Juv. Del. P. 17.01, subd. 1 reflected the definition of "juvenile petty offense" set forth pursuant to 1996 Minn. Laws Ch. 408, Art. 6, Sec. 1. However, because this definition often changed, Rule 17.01, subd. 1 now refers to the applicable statute. See Minnesota Statutes, section 260B.007, subd. 16 (2002).

Amend the eighth paragraph of the comment to Rule 17 as follows:

Minn. R. Juv. Del. P. 17.10 is based on Minnesota Statutes, section 260B.225, subd. 7 (2002), which provides that the juvenile court may transfer a juvenile traffic offender case to adult court after a hearing if the juvenile court finds that the welfare of the child or public safety would be better served under the laws relating to adult traffic matters.

23. Rule 18. Certification of Delinquency Matters

Amend Rule 18.04, subd. 4 as follows:

Subd. 4. Filing and Access to Reports. The person(s) making a study shall file a written report with the court and provide copies to the prosecuting attorney and the child's counsel four (4) days, excluding Saturdays, Sundays, and legal holidays, prior to the time scheduled for the hearing. ~~The reports shall otherwise be confidential.~~The court

administrator shall not otherwise disclose the report except by court order.

Amend Rule 18.06, subd. 3 as follows:

Subd. 3. Public Safety. In determining whether the public safety is served by certifying the matter, or in designating the proceeding an extended jurisdiction juvenile proceeding, the court shall consider the following factors:

(A) the seriousness of the alleged offense in terms of community protection, including the existence of any aggravating factors recognized by the Minnesota Sentencing Guidelines, the use of a firearm, and the impact on any victim;

(B) the culpability of the child in committing the alleged offense, including the level of the child's participation in planning and carrying out the offense and the existence of any mitigating factors recognized by the Minnesota Sentencing Guidelines;

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

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

(E) the adequacy of the punishment or programming available in the juvenile justice system~~, either in the exercise by the court of its delinquency jurisdiction or in its jurisdiction over extended jurisdiction juvenile cases~~; and

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

In considering these factors, the court shall give greater weight to the seriousness of the alleged offense and the child's prior record of delinquency than to the other factors listed in this subdivision.

Amend Rule 18.07 by adding a new subdivision 5 as follows:

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

24. Rule 18 Comment

Amend the second through eighth paragraphs of the comment to Rule 18 as follows:

Much of the text of Minn. R. Juv. Del. P. 18.05, subd. 1(A) is taken from Minnesota

Statutes, section 260B.163 (2002).

The sanction for delay in Minn. R. Juv. Del. P. 18.05, subd. 1(B) and 18.07, subd. 3 is modeled after Minn. R. Crim. P. 11.10. See In re Welfare of J.J.H., 446 N.W.2d 680, 681-82 (Minn. Ct. App. 1989) (order issued 66 days after hearing, 38 days after submission of written argument; because rule contains no sanction, reversal denied). See also McIntosh v. Davis, 441 N.W.2d 115 (Minn. 1989) (where alternative remedies available, mandamus not appropriate to enforce time limit of Minn. R. Crim. P. 11.10 speedy trial rule).

On continuation questions under Minn. R. Juv. Del. P. 18.05, subd. 1(B), the victim should have input but does not have the right of a party to appear and object.

Most of the waiver language in Minn. R. Juv. Del. P. 18.05, subd. 1(C) is taken from the 1983 version of Minn. R. Juv. Del. P. 15.03.

Minn. R. Juv. Del. P. 18.05, subd. 2(B) requires a determination on appearances of necessary persons. Under Minnesota Statutes, section 260B.163, subd. 7 (2002) the custodial parent or guardian of the child who is the subject of the certification proceedings must accompany the child at each hearing, unless the court excuses the parent or guardian from attendance for good cause shown. The failure of a parent or guardian to comply with this duty may be punished as provided in Minnesota Statutes, section 260B.154 (2002).

Much of the content of Minn. R. Juv. Del. P. 18.05, subd. 3 is modeled after Minn. R. Crim. P. 11.03 and 18.06, subd. 1. The court may employ police statements for probable cause determinations in the same manner as permitted in adult proceedings under Minn. R. Crim. P. 11.03. Also note In re Welfare of E.Y.W., 496 N.W.2d 847, 850 (Minn. Ct. App. 1993) (juvenile not entitled to exclusionary hearing before decision on probable cause).

Minn. R. Juv. Del. P. 18.05, subd. 3 and 18.07, subd. 2(A)(2) eliminate the need for a probable cause finding when a delinquency accusation is presented by an indictment. Accusation by indictment is uncommon, but might occur more often as the result of grand jury proceedings conducted after 1994 statutory amendments on the question of whether a juvenile is to be accused of first degree murder in adult proceedings. See Minnesota Statutes, section 260B.007, subd. 6 (2002). Minn. R. Juv. Del. P. 18.05, subd. 4(B) is consistent with case law. Because the certification question is dispositional in nature, strict application of the rules of evidence is thought to be inappropriate. Minn. R. Juv. Del. P.

18.05 does not address the consequences of the child's testimony at a hearing. See Simmons v. United States, 390 U.S. 377 (1968) and State v. Christenson, 371 N.W.2d 228 (Minn. Ct. App. 1985). Cf. Harris v. New York, 401 U.S. 222 (1971).

Amend the tenth and eleventh paragraphs of the comment to Rule 18 as follows:

Following presentation of evidence by the party with the burden of proof under Minn. R. Juv. Del. P. 18.05, subd. 4(C) or (D), the adverse party may move the court for directed relief on the grounds that the burden of proof has not been met by the evidence presented.

The determination under Minn. R. Juv. Del. P. 18.06, subd. 1 whether an offense would result in a presumptive commitment to prison under the Minnesota Sentencing Guidelines should be analyzed pursuant to those guidelines. The public safety factors listed in Rule 18.06, subd. 3 mirror those set forth in Minnesota Statutes, section 260B.125, subd. 4 and eliminate the need for non-offense related evidence of dangerousness. See In re Welfare of D.M.D, 607 N.W.2d 432 (Minn. 2000).

Amend the fourteenth through last paragraphs of the comment to Rule 18 as follows:

Minn. R. Juv. Del. P. 18.02, subd. 2 repeats the procedural requirement stated in Minnesota Statutes, section 260B.125, subd. 9 (2002).

Rule 18 previously contained a provision that allowed jail credit for time spent in custody in connection with the offense or behavioral incident on which further proceedings are to occur. See Minn. R. Juv. Del. P. 18.06, subd. 1(D) (repealed 2003). That provision was deleted because jail credit is awarded at the time of sentencing in adult court, and is thus governed by the Minnesota Rules of Criminal Procedure, not the Minnesota Rules of Juvenile Procedure. See Minn. R. Crim. P. 27.03, subd. 4(B).

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

25. Rule 19. Extended Jurisdiction Juvenile Proceedings and Prosecutions

Amend Rule 19.03, subd. 4 as follows:

Subd. 4. Filing and Access to Reports. The person(s) making a study shall file a

written report with the court and provide copies to the prosecuting attorney and the child's counsel four (4) days, excluding Saturdays, Sundays, and legal holidays, prior to the time scheduled for the hearing. ~~The report shall otherwise be confidential~~The court administrator shall not otherwise disclose the report except by court order.

Amend Rule 19.07 by adding a new subdivision 6 as follows:

Subd. 6. Appeal. An appeal of the final order pursuant to this rule shall follow the procedure set forth in Rule 21.

Amend Rule 19.11, subd. 3 by inserting a new subsection (D) and relettering existing subsections (D) and (E) to (E) and (F) as follows:

(D) *Jail Credit for Juvenile Facility Custody.* If the court revokes the probationer's extended jurisdiction juvenile status, the court shall ensure that the record accurately reflects all time spent in custody in connection with the underlying offense at juvenile facilities where the level of confinement and limitations are the functional equivalent of a jail, workhouse, or regional correctional facility. Such time shall be deducted from any adult sentence imposed pursuant to Minnesota Statutes, section 609.14, subdivision 3.

26. Rule 19 Comment

Amend the second through fifth paragraphs of the comment to Rule 19 as follows:

The sanction for delay in Minn. R. Juv. Del. P. 19.04, subd. 1(B) and 19.06, subd. 3 is modeled after Minn. R. Crim. P. 11.10. See In re Welfare of J.J.H., 446 N.W.2d 680, 681-82 (Minn. Ct. App. 1989) (order issued 66 days after hearing, 38 days after submission of written argument; because rule contains no sanction, reversal denied). See also McIntosh v. Davis, 441 N.W.2d 115 (Minn. 1989) (where alternative remedies available mandamus not appropriate to enforce time limit of Minn. R. Crim. P. 11.10 speedy trial rule).

Most of the waiver language in Minn. R. Juv. Del. P. 19.04 subd. 1(C) is taken from the 1983 version of Minn. R. Juv. P. 15.03.

Minn. R. Juv. Del. P. 19.04 does not address the consequences of the child's

testimony at a hearing or whether it can be subsequently used against the child. See Simmons v. United States, 390 U.S. 377 (1968); State v. Christenson, 371 N.W.2d 228 (Minn. Ct. App. 1985) (impeachment); cf. Harris v. New York, 401 U.S. 222 (1971).

On continuation questions under Minn. R. Juv. Del. P. 19.04, subd. 1(B), the victim should have input but does not have the right of a party to appear and object.

Amend the seventh and eighth paragraphs of the comment to Rule 19 as follows:

Much of the content of Minn. R. Juv. Del. P. 19.04, subd. 3 is modeled after Minn. R. Crim. P 11.03 and 18.06, subd. 1. The court may employ police statements for probable cause determinations in the same manner as permitted in adult proceedings under Minn. R. Crim. P. 11.03. Also note, In re Welfare of E.Y.W., 496 N.W.2d 847, 850 (Minn. Ct. App. 1993) (juvenile not entitled to exclusionary hearing before decision on probable cause).

Minn. R. Juv. Del. P. 19.04, subd. 3 eliminates the need for a probable cause finding when a delinquency accusation is presented by an indictment. Accusation by indictment is uncommon, but might occur more often as a result of grand jury proceedings conducted after 1994 statutory amendments on the question of whether a child is to be accused of first degree murder in adult proceedings. See Minnesota Statutes, section 260B.007, subd. 6 (2002).

Amend the tenth paragraph of the comment to Rule 19 as follows:

Minn. R. Juv. Del. P. 19.04, subd. 3(B) is consistent with case law. Because the extended jurisdiction juvenile prosecution question is dispositional in nature, strict application of the rules of evidence is thought to be inappropriate.

Add a new eleventh paragraph to the comment to Rule 19 as follows:

The public safety factors listed in Minn. R. Juv. Del. P. 19.05 mirror those set forth in Minnesota Statutes, section 260B.125, subd. 4, and eliminate the need for non-offense related evidence of dangerousness. See In re Welfare of D.M.D., 607 N.W.2d 432 (Minn. 2000).

Add new seventeenth and eighteenth paragraphs to the comment to Rule 19 as follows:

In accordance with the procedure and law set forth in State v. B.Y., 659 N.W.2d 763 (Minn. 2003), Minn. R. Juv. Del. P. 19.11, subd. 3 incorporates consideration of the Austin factors (see State v. Austin, 295 N.W.2d 246 (Minn. 1980)) into the court's determination of whether to revoke the stayed prison sentence of an EJJ probationer.

The court's holdings in State v. Garcia, 683 N.W.2d 294 (Minn. 2004) and Asfaha v. State, 665 N.W.2d 523 (Minn. 2003) found Minn. Stat. § 260B.130, subd. 5 (2002) unconstitutional to the extent it denied credit for time spent in custody in juvenile facilities. Minn. R. Juv. Del. P. 19.11, subd. 3 has been amended to require the court to calculate and record the amount of time the probationer spent in custody at juvenile facilities where the level of confinement and limitations were the functional equivalent of a jail, workhouse, or correctional facility. Such time must be deducted from any adult sentence imposed after revocation of extended jurisdiction juvenile status.

Amend the last paragraph of the comment to Rule 19 as follows:

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

27. Rule 20. Child Incompetent to Proceed and Defense of Mental Illness or Mental Deficiency

Amend Rule 20.01, subd. 6 as follows:

Subd. 6. Continuing Supervision by the Court. In felony and gross misdemeanor cases in which proceedings have been suspended, the person charged with the child's supervision, such as the head of the institution to which the child is committed, shall report to the trial court on the child's mental condition and competency to proceed at least every six (6) months unless otherwise ordered. Copies of the reports shall also be sent to the prosecuting attorney and to the child's counsel.

Unless the ~~petition~~charging document against the child has been dismissed as provided by Rule 20.01, subdivision 7, the trial court, child's counsel and the prosecuting attorney shall be notified of any proposed institutional transfer, partial institutionalization status, and any proposed termination, discharge, or provisional discharge of the juvenile

protection case. The prosecuting attorney shall have the right to participate as a party in any proceedings concerning such proposed changes in the child's commitment or status.

Amend the preamble language to Rule 20.02, subd. 5 as follows:

Subd. 5. Report of Examination. At the conclusion of the examination, a written report of the examination shall be forwarded to the judge who ordered the examination, the prosecuting attorney and to the child's counsel. The ~~contents of the report~~court administrator shall not otherwise ~~be~~ disclose~~d~~ the report except ~~as ordered~~ by ~~the~~ court order. The report of the examination shall contain:

28. Rule 20 Comment

Amend the first two paragraphs of the comment to Rule 20 as follows:

Minn. R. Juv. Del. P. 20 is based upon Minn. R. Crim. P. 20.

Under Minn. R. Juv. Del. P. 20.01, subd. 3(C), the court shall permit examination of the child or observation of such examination by a qualified medical personnel retained and requested by the child's counsel or prosecuting attorney. The court has the authority to order payment of reasonable and necessary costs of evaluation of the child at public expense pursuant to Minnesota Statutes, section 260B.331, subd. 1 (2002). Furthermore, under Minnesota Statutes, section 260.042 (2002), the court shall make an orientation and educational program available for juveniles and their families in accordance with the program established, if any, by the Minnesota Supreme Court.

29. Rule 21. Appeals

Amend Rule 21.01 as follows:

This rule governs the procedure for appeals from juvenile traffic and juvenile petty, delinquency, extended jurisdiction juvenile, and certification proceedings in district court. Except as provided by these rules, Minnesota Rules of Civil Appellate Procedure shall govern appeals from juvenile court proceedings. These rules do not limit a child's right to seek extraordinary writs. In order to expedite its decision or for other good cause shown, the court of appeals may suspend any of these rules, except the time for filing a notice of appeal.

The court of appeals shall expedite all appeals from juvenile court proceedings pursuant to Rule 21.07.

A party may petition to the Supreme Court of Minnesota for review pursuant to Minnesota Rules of Civil Appellate Procedure 117 or 118.

Amend Rule 21.03, subd. 2(D) as follows:

(D) *Briefs.* The Minnesota Rules of Civil Appellate Procedure shall govern the form and filing of briefs except as modified here:

(1) Extended Jurisdiction Juvenile and Certification Determinations.

(a) The appellant shall serve and file the appellant's brief and appendix within thirty (30) days after delivery of the transcript by the reporter. If the transcript is obtained prior to appeal or if the record on appeal does not include a transcript, then the appellant shall serve and file the appellant's brief and appendix within thirty (30) days after the filing of the notice of appeal.

(b) The appellant's brief shall contain a statement of the procedural history.

(c) The respondent shall serve and file the respondent's brief and appendix, if any, within thirty (30) days after service of the brief of appellant.

(d) The appellant may serve and file a reply brief within fifteen (15) days after service of the respondent's brief.

(2) Briefs For Cases Other Than Extended Jurisdiction Juvenile and Certification Determinations.

~~(1)~~(a) The appellant shall serve and file the appellant's brief and appendix within forty-five (45) days after delivery of the transcript by the reporter. If the transcript is obtained prior to appeal or if the record on appeal does not include a transcript, then the appellant shall serve and file the appellant's brief and appendix within forty-five (45) days after the filing of the notice of appeal.

~~(2)~~(b) The appellant's brief shall contain a statement of the procedural history.

~~(3)~~(c) The respondent shall serve and file the respondent's brief and appendix, if any, within thirty (30) days after service of the brief of appellant.

~~(4)~~(d) The appellant may serve and file a reply brief within fifteen

(15) days after service of the respondent's brief.

Amend Rule 21.04, subd. 1 as follows:

Subdivision 1. Scope of Appeal. The prosecuting attorney may appeal as of right from:

(A) sentences or dispositions imposed or stayed in extended jurisdiction juvenile cases;

(B) denial of a motion for certification or denial of a determination of extended jurisdiction juvenile;

(C) pretrial orders, including suppression orders; or

(D) orders dismissing the ~~petition~~charging document for lack of probable cause when the dismissal was based solely on a question of law.

Appeals from disposition or sentence shall only include matters which arose after adjudication or conviction. In addition to all powers of review presently existing, the court may review the sentence or disposition to determine whether it is consistent with the standards set forth in Rule 15.05, subdivisions 2 and 3.

Amend the introductory language and part (A) of Rule 21.04, subd. 3 as follows:

Subd. 3. Procedure for Appeals. Prosecutorial appeals ~~from final orders~~under Rule 21.04, subdivision 1(A), (B), and (D) shall be governed by Rule 21.03, subdivision 2. ~~All other prosecutorial~~ Prosecutorial appeals under Rule 21.04, subdivision 1(C) shall proceed as follows:

(A) *Time for Appeal.* The prosecuting attorney may not appeal until all issues raised during ~~the certification hearing or~~ the evidentiary hearing and pretrial conference have been determined by the trial court. The appeal shall be taken within five (5) days after notice of entry of the appealable order is served upon the prosecuting attorney by the district court administrator. An appeal by the prosecuting attorney under this rule bars any further appeal by the prosecuting attorney from any existing orders not included in the appeal. No appeal of a pretrial order by the prosecuting attorney shall be taken after jeopardy has attached. An appeal under this rule does not deprive the trial court of jurisdiction over pending matters not included in the appeal.

Insert new Rule 21.07 as follows:

Rule 21.07. Time for Issuance of Decision.

All decisions regarding appeals of certification determinations pursuant to Rule 18.07 or extended jurisdiction juvenile determinations pursuant to Rule 19.07 shall be issued within sixty (60) days of the date the case is deemed submitted pursuant to the Rules of Civil Appellate Procedure. The court of appeals shall issue its decision in all other appeals within ninety (90) days of the date the case is deemed submitted pursuant to the Rules of Civil Appellate Procedure.

30. Rule 21 Comment

Amend the third paragraph of the comment to Rule 21 as follows:

Minn. R. Juv. Del. P. 21.03, subd. 1(A) (7) and (10) includes the right to appeal a stayed sentence and the execution of a stayed sentence. See Minn. R. Crim. P. 27.04, subd. 3(5) and 28.05, subd. (2). An order continuing the matter without adjudication and imposing a disposition pursuant to Minnesota Statutes, section 260B.198, subds. 1(a) or (b)(2002) is an appealable final order as is a subsequent order adjudicating the child and imposing a disposition pursuant to Minnesota Statutes, section 260B.198, subd. 1 (2002).

Amend the fifth through last paragraphs of the comment to Rule 21 as follows:

The parents or the child may be required to contribute to some or all of the costs of representation. See Minn. R. Juv. Del. P. 3.06, subd. 2. See also Minnesota Statutes, section 260B.331, subd. 5 (2002).

Minn. R. Juv. Del. P. 21.03, subd. 2(C)(1) refers to "necessary transcripts" because in some cases only a partial transcript will be required. Minn. R. Civ. App. P. 110.02 shall govern partial transcripts.

Whether or not the order for certification should be stayed is discretionary with the court. Certification orders are governed by Minn. R. Juv. Del. P. 18.07. If a stay is granted, the child will be detained in a juvenile facility if detention is necessary. If the stay of the certification order is not granted and detention is necessary, the child will more likely be detained in an adult facility pending the appeal.

Minn. R. Juv. Del. P. 21.04, subd. 1(D), which allows prosecutors to appeal orders dismissing a ~~petition~~charging document for lack of probable cause when dismissed solely on a question of law, is based on In re Welfare of C.P.W., 601 N.W.2d 204, 207 (Minn. Ct. App. 1999).

31. Rule 22 Comment

Amend the last paragraph of the comment to Rule 22 as follows:

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

32. Rule 23 Comment

Add a new comment section to Rule 23 as follows:

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

33. Rule 25. Notice

Amend Rule 25.02 as follows:

Rule 25.02 Content

Any summons or notice in lieu of summons shall include:

(A) a copy of the ~~petition, citation, tab charge~~charging document, court order, motion, affidavit or other legal documents, filed with the court which require a court appearance;

(B) a statement of the time and place of the hearing;

(C) a brief statement describing the purpose of the hearing;

(D) a brief statement of rights of the child and parents;

(E) notice to the child and parent that a failure to appear in court could result in a warrant; and

(F) such other matters as the court may direct.

34. Rule 25 Comment

Amend the first paragraph of the comment to Rule 25 as follows:

Pursuant to Minnesota Statutes, section 260.141, subd. 1 (1994), notices of juvenile court proceedings were to be made by personal service or if made pursuant to Minn. R. Civ. P. 4.02, by mail with an acknowledgement returned to the court. That was not the practice throughout the state. This rule is written to reflect the common practice of simply mailing the notice (called a notice in lieu of summons) and ~~petition~~charging document by first class mail. If those served do not appear in response to the notice, the court can proceed with personal service of a summons and follow up with a warrant if there is still a failure to appear. Appearance rates are generally high with just a mailed notice and the costs of process are significantly increased by mailed service with acknowledgement or by personal service. The legislature has since amended Minnesota Statutes, section 260.141, subd. 1 to comport with this rule. 1996 Minn. Laws Ch. 408, Art, 6, Secs. 3 and 12; see Minn. Stat. § 260B.152, subd. 1 (2002).

35. Rule 26 Comment

Amend the comment to Rule 26 as follows:

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

Add a new second paragraph to the comment to Rule 26 as follows:

Reference in this rule to "counsel for the parent(s), legal guardian, or legal custodian" includes the parent, legal guardian, or legal custodian who is proceeding pro se. Minn. R. Juv. Del. P. 1.01.

36. Rule 29 Comment

Amend the comment to Rule 29 as follows:

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

Add a new second paragraph to the comment to Rule 29 as follows:

Reference in this rule to "counsel for the parent(s), legal guardian, or legal custodian" includes the parent, legal guardian, or legal custodian who is proceeding pro se. Minn. R. Juv. Del. P. 1.01.

37. Rule 30. Records

Amend Rule 30.02, subd. 2(B) as follows:

(B) *Child's Counsel, Guardian Ad Litem, and Counsel for Child's Parent, Legal Guardian, or Legal Custodian.* Juvenile court records of the child shall be available for inspection, copying and release to the following without court order:

(1) the child's counsel and guardian ad litem;

(2) counsel for the child's parent(s), legal guardian or legal custodian subject to restrictions on copying and release imposed by the court.

Amend Rule 30.02, subd. 3 by adding a new subsection (D) as follows:

Subd. 3. Court Order Required. (A) *Person(s) with Custody or Supervision of the Child, and Others.* The court may order juvenile court records to be made available for inspection, copying, disclosure or release, subject to such conditions as the court may direct, to:

(1) a representative of a state or private agency providing supervision or having custody of the child under order of the court; or

(2) any individual for whom such record is needed to assist or to supervise the child in fulfilling a court order; or

(3) any other person having a legitimate interest in the child or in the operation of the court.

(B) *Public.* A court order is required before any inspection, copying, disclosure or release to the public of the record of a child. Before any court order is made the court must find that inspection, copying, disclosure or release is:

(1) in the best interests of the child; or

(2) in the interests of public safety; or

(3) necessary for the functioning of the juvenile court system.

(C) *Disclosure Prohibited*. The record of the child shall not be inspected, copied, disclosed or released to any present or prospective employer of the child or the military services.

(D) Disclosure Limited. The inspection, copying, disclosure, or release of the juvenile records listed below is limited pursuant to the identified Rules of Juvenile Delinquency Procedure:

(1) Predisposition report (Rule 15.03, subd. 4);

(2) Juvenile certification study (Rule 18.04, subd. 4);

(3) Extended jurisdiction juvenile study (Rule 19.03, subd. 4); and

(4) Competency examination (Rule 20.02, subd. 5).

38. Rule 30 Comment

Amend the comment to Rule 30 as follows:

Legal records as defined in Minnesota Statutes, section 260B.171, subd. 1 (2002), are the petition, summons, notice, findings, orders, decrees, judgments and motions and such other matters as the court deems necessary and proper. Minnesota Statutes, section 260B.171, subd. 4 (2002), provides exceptions to public access of "legal records," arising under Minnesota Statutes, section 260B.163, subd. 1 (2002), delinquency proceedings alleging or proving a felony level violation by a juvenile at least 16 years old at the time of violation, along with the following exclusions: (1) Minnesota Statutes, section 245A.04, subd. 3(d) (2002), which directs the court to provide juvenile court records to the Commissioner of Human Services; and (2) Minnesota Statutes, sections 611A.03, 611A.04, 611A.06 and 629.73 (2002), which provide for the rights of victims in delinquency proceedings, juvenile traffic proceedings involving driving under the influence of alcohol or drugs and proceedings involving any other act committed by a juvenile that would be a crime as defined in Minnesota Statutes, section 609.02 (2002), if committed by an adult.

The juvenile court shall maintain records pertaining to juvenile delinquency adjudications until the juvenile reaches 28 years of age. Records pertaining to convictions of extended jurisdiction juveniles shall be maintained for as long as they would be maintained if the offender had been an adult.

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

"Prosecuting attorney" as used in this rule also includes adult court prosecuting attorneys.

Pursuant to Minnesota Statutes, section 260B.171, subd. 2 (2002), the juvenile court shall forward data for juvenile delinquents adjudicated delinquent for felony- or gross misdemeanor-level offenses. The court shall also forward data to the BCA on persons convicted as extended jurisdiction juveniles.

Reference in this rule to "counsel for the parent(s), legal guardian, or legal custodian" includes the parent, legal guardian, or legal custodian who is proceeding pro se. Minn. R. Juv. Del. P. 1.01.

If a juvenile is enrolled in school, the juvenile's probation officer shall transmit a copy of the court's disposition order if the juvenile is adjudicated delinquent for committing an act on school property or if the juvenile is adjudicated delinquent for one of the offenses enumerated in Minnesota Statutes, section 260B.171, subd. 3(a) (2002). When the probation officer transmits a disposition order to a school, the probation officer shall notify the parent, legal guardian or legal custodian that this information has been sent to the juvenile's school.

~~*"Prosecuting attorney" as used in this rule also includes adult court prosecuting attorneys.*~~

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