Minnesota Rules of Juvenile Delinquency Procedure
with amendments effective September 1, 2018

RULE 1. SCOPE, APPLICATION AND GENERAL PURPOSE

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.

Rule 1.02. General Purpose

The purpose of the juvenile rules is to establish uniform practice and procedures for the juvenile courts of the State of Minnesota, and to assure that the constitutional rights of the child are protected. The purpose of the laws relating to children alleged or adjudicated to be delinquent is to promote the public safety and reduce juvenile delinquency by maintaining the integrity of the substantive law prohibiting certain behavior and by developing individual responsibility for lawful behavior. This purpose should be pursued through means that are fair and just, that recognize the unique characteristics and needs of children, and that give children access to opportunities for personal and social growth. These rules shall be construed to achieve these purposes.

(Amended effective September 1, 2005.)

Comment--Rule 1

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

The Indian Child Welfare Act does not apply to placements of Indian children that are based upon an act that, if committed by an adult, would be deemed a crime. 25 U.S.C. section 1903(1) (1988). However, Minnesota Statutes, section 260.761, subd. 2 (2002) of the

Minnesota Indian Family Preservation Act requires that the Indian child's tribal social service agency receive notice when the court transfers legal custody of the child under Minnesota Statutes, section 260B.198, subd. 1(c)(1), (2) and (3) (2002) following an adjudication for a misdemeanor-level delinquent act.

RULE 2. ATTENDANCE AT HEARINGS AND PRIVACY

Rule 2.01 Right to Attend Hearing

Juvenile court proceedings are closed to the public except as provided by law. Only the following may attend hearings:

(A) the child, guardian ad litem appointed in the delinquency proceeding and counsel for the child;
(B) the parent(s), legal guardian, or legal custodian of the child and their counsel;
(C) the spouse of the child;
(D) the prosecuting attorney;
(E) other persons requested by the parties listed in (A) through (D) and approved by the court;
(F) persons authorized by the court, including a guardian ad litem appointed for the child in another mater, under such conditions as the court may approve;
(G) persons authorized by statute, under such conditions as the court may approve; and
(H) any person who is entitled to receive a summons or notice under these rules.

Rule 2.02 Exclusion of Persons Who Have A Right To Attend Hearings

The court may temporarily exclude any person, except counsel and the guardian ad litem appointed in the delinquency proceeding, when it is in the best interests of the child to do so. The court shall note on the record the reasons a person is excluded. Counsel for the person excluded has the right to remain and participate if the person excluded had the right to participate in the proceeding. An unrepresented child cannot be excluded on the grounds that it is in the best interests of the child to do so.

(Amended effective January 1, 2007.)

Rule 2.03 Presence Required

Subdivision 1. Child. The child shall have the right to be present at all hearings. The child is deemed to waive the right to be present if the child voluntarily and without justification is absent after the hearing has commenced or if the child disrupts the proceedings. Disruption of the proceedings occurs if the child, after warning by the court, engages in conduct which interrupts the orderly procedure and decorum of the court. If the child is removed from the courtroom, the court shall state the reasons for the removal on the record. Except at trials and dispositional hearings, the child's appearance may be waived if the child is hospitalized in a psychiatric ward and the treating physician states in writing the reasons why not appearing would serve the child's best interests.

Subd. 2 Counsel.

(A) Counsel for the child shall be present at all hearings.

(B) The prosecuting attorney shall be present or available for all hearings unless excused by the court in its discretion.

Subd. 3. Parent, Legal Guardian or Legal Custodian. The parent, legal guardian or legal custodian of a child who is the subject of a delinquency or extended jurisdiction juvenile proceeding shall accompany the child to all hearings unless excused by the court for good cause shown. If such person fails to attend a hearing with the child without excuse, the court may issue an arrest warrant and/or hold the person in contempt. The court may proceed if it is in the best interests of the child to do so even if the parent, legal guardian, or legal custodian fails to appear.

(Amended effective July 1, 2024.)

Rule 2.04 Right to Participate

Subdivision 1. Child and Prosecuting Attorney. The child and prosecuting attorney have the right to participate in all hearings.

Subd. 2. Guardian ad Litem. The guardian ad litem appointed in the delinquency proceeding has a right to participate and advocate for the best interests of the child at all hearings.

Subd. 3. Parent(s), Legal Guardian, or Legal Custodian. Except in their role as guardian ad litem for the child, the parent(s), legal guardian, or legal custodian may not participate separately at hearings until the dispositional stage of the proceedings and the court shall advise them of this right. A parent, legal guardian, or legal custodian for the child is not subject to the Rules of Guardian Ad Litem Procedure in Juvenile and Family Court. A parent, legal guardian, or legal custodian shall not participate as counsel for the child unless licensed to practice law.

Subd. 4. Generally. Persons represented by counsel, who have a right to participate, shall participate through their counsel. Unrepresented persons may participate on their own behalf.

Rule 2.05 Ex-parte Communications

The court shall not receive or consider any ex-parte communication from anyone concerning a proceeding, including conditions of release, detention, evidence, adjudication, disposition, or any other matter. The court shall fully disclose to all counsel on the record any attempted ex-parte communication.

Rule 2.06 Use of Restraints

Subdivision 1. Definition. As used in this rule, “restraints” means a mechanical or other

device that constrains the movement of a person's body or limbs.

Subd. 2. When Restraints May be Used. Restraints may not be used on a child appearing in court in a proceeding under chapter 260B unless the court finds that:

(A) the use of restraints is necessary:

(1) to prevent physical harm to the child or another; or
(2) to prevent the child from fleeing in situations in which the child presents a substantial risk of flight from the courtroom; and

(B) there are no less restrictive alternatives to restraints that will prevent flight or physical harm to the child or another, including but not limited to the presence of court personnel, law enforcement officers, or bailiffs.

The finding in clause (A), paragraph (2), may be based, among other things, on the child having a history of disruptive courtroom behavior or behavior while in custody for any current or prior offense that has placed others in potentially harmful situations, or presenting a substantial risk of inflicting physical harm on the child or others as evidenced by past behavior. The court may take into account the physical structure of the courthouse in assessing the applicability of the above factors to the individual child.

Subd. 3. Hearing Procedure and Order. The court shall be provided the child's behavior history and shall provide the child an opportunity to be heard in person or through counsel before ordering the use of restraints. If restraints are ordered, the court shall make findings of fact in support of the order.

(Amended effective July 1, 2024.)

Comment--Rule 2

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.

Minn. R. Juv. Del. P. 2.06 is derived from Minnesota Statutes, section 260B.008 (2022).

RULE 3. RIGHT TO COUNSEL

Rule 3.01 Generally

The child has the right to be represented by an attorney. This right attaches no later than when the child first appears in court. The attorney shall initially consult with the child privately, outside of the presence of the child's parent(s), legal guardian or legal custodian. The attorney shall act solely as the counsel for the child.

Rule 3.02 Appointment of Counsel

Subdivision 1. Delinquency Felonies and Gross Misdemeanors. In any delinquency proceeding in which the child is charged with a felony or gross misdemeanor, the court shall appoint counsel at public expense to represent the child, if the child cannot afford counsel and private counsel has not been retained to represent the child. If the child waives the right to counsel, the court shall appoint standby counsel to be available to assist and consult with the child at all stages of the proceedings.

Subd. 2. Delinquency Misdemeanors. In any delinquency proceeding in which the child is charged with a misdemeanor, the court shall appoint counsel at public expense to represent the child if the child cannot afford counsel and private counsel has not been retained to represent the child, and

the child has not waived the right to counsel. If the child waives the right to counsel, the court may appoint stand-by counsel to be available to assist and consult with the child at all stages of the proceedings.

Subd. 3. Out-of-Home Placement. In any proceeding in which out-of-home placement is proposed, the court shall appoint counsel at public expense to represent the child, if the child cannot afford counsel and private counsel has not been retained to represent the child. If the child waives the right to counsel, the court shall appoint stand-by counsel to be available to assist and consult with the child. No out-of-home placement may be made in disposition proceedings, in violation proceedings, or in subsequent contempt proceedings, if the child was not initially represented by counsel or standby counsel, except as provided herein. If out-of-home placement is based on a plea or adjudication obtained without assistance of counsel, the child has an absolute right to withdraw that plea or obtain a new trial.

Subd. 4. Probation Violation and Modification of Disposition for Delinquent Child. In any proceeding in which a delinquent child is alleged to have violated the terms of probation, or where a modification of disposition is proposed, the child has the right to appointment of counsel at public expense. If the child waives the right to counsel, the court shall appoint standby counsel.

Subd. 5. Juvenile Petty Offense or Juvenile Traffic Offense.

(A) In any proceeding in which the child is charged as a juvenile petty offender or juvenile traffic offender, the child or the child's parent may retain private counsel, but the child does not have a right to appointment of a public defender or other counsel at public expense, except:

(1) when the child may be subject to out-of-home placement as provided in Minnesota Statutes, section 260B.235, subdivision 6; or

(2) as otherwise provided pursuant to Rule 3.02, subdivisions 3, 6 and 7.

(B) Except in the discretion of the Office of the State Public Defender, a child is not entitled to appointment of an attorney at public expense in an appeal from adjudication and disposition in a juvenile petty offender or juvenile traffic offender matter.

Subd. 6. Detention. Every child has the right to be represented by an attorney at a detention hearing. An attorney shall be appointed for any child appearing at a detention hearing who cannot afford to hire an attorney. If the child waives representation, standby counsel shall be appointed.

Subd. 7. Child Incompetent to Proceed. Every child shall be represented by an attorney in any proceeding to determine whether the child is competent to proceed. An attorney shall be appointed for any child in such proceeding who cannot afford to hire an attorney.

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

permitted to participate in the grand jury proceedings except to advise and consult with the child witness while the child is testifying.

(Amended effective July 1, 2015.)

Rule 3.03 Dual Representation

A child is entitled to the effective representation of counsel. When two or more children are jointly charged or will be tried jointly pursuant to Rule 13.07, and two or more of them are represented by the same counsel, the following procedure shall be followed:

(A) The court shall address each child individually on the record. The court shall advise the child of the potential danger of dual representation and give the child the opportunity to ask the court questions about the nature and consequences of dual representation. The child shall be given the opportunity to consult with outside counsel.

(B) On the record, the court shall ask each child whether the child
  (1) understands the right to be effectively represented by a lawyer;
  (2) understands the details of the lawyer's possible conflict of interest;
  (3) understands the possible dangers in being represented by a lawyer with these possible conflicts;
  (4) discussed the issue of dual representation with a separate lawyer; and
  (5) wants a separate lawyer or waives their Sixth Amendment protections.

Rule 3.04 Waiver of Right to Counsel

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

Subd. 2. Competency Proceedings. Any child subject to competency proceedings pursuant to Rule 20 shall not be permitted to waive counsel.

Subd. 3. Court Approval/Disapproval. If the court accepts the child's waiver, it shall state on the record the findings and conclusions that form the basis for its decision and shall appoint standby

counsel as required by Rule 3.02.

(Amended effective July 1, 2015.)

Rule 3.05 Renewal of Advisory

After a child waives the right to counsel, the child shall be advised of the right to counsel by the court on the record at the beginning of each hearing at which the child is not represented by counsel.

Rule 3.06 Eligibility for Court Appointed Counsel at Public Expense

Subdivision 1. When Parent or Child Cannot Afford to Retain Counsel. A child and his parent(s) are financially unable to obtain counsel if the child is unable to obtain adequate representation without substantial hardship for the child or the child's family. The court shall inquire to determine the financial eligibility of a child for the appointment of counsel. The ability to pay part of the cost of adequate representation shall not preclude the appointment of counsel for the child.

Subd. 2. When Parent Can Afford to Retain Counsel. If the parent(s) of a child can afford to retain counsel in whole or in part and have not retained counsel for the child, and the child cannot afford to retain counsel, the child is entitled to representation by counsel appointed by the court at public expense. After giving the parent(s) a reasonable opportunity to be heard, the court may order that service of counsel shall be at the parent(s)'s expense in whole or in part depending upon their ability to pay.

Rule 3.07 Right of Parent(s), Legal Guardian(s), Legal Custodian(s) and Guardian ad Litem to Counsel

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 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.

Subd. 2. Right of Guardian Ad Litem to Counsel. In the event of a conflict between the child and the guardian ad litem, the court may appoint separate counsel to represent the guardian ad litem appointed in the delinquency proceeding.

(Amended effective September 1, 2005.)

Rule 3.08 Certificates of Representation

A lawyer representing a client in juvenile court, other than a public defender, shall file with the court administrator a certificate of representation prior to appearing.

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

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

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

(Amended effective July 1, 2015.)

Comment--Rule 3

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 delinquency 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).

In McKaskle v. Wiggins, the Supreme Court concluded that appointment of standby counsel was consistent with a defendant's Faretta right to proceed pro se, so long as standby counsel did not stifle the defendant's ability to preserve actual control over the case and to maintain the appearance of pro se representation. The child must have an opportunity to consult with standby counsel during every stage of the proceedings. State v. Richards, 495 N.W.2d 187 (Minn. 1992). In order to vindicate this right, counsel must be physically present. "[I]t would be virtually impossible for a standby counsel to provide assistance, much less effective assistance, to a criminal client when that counsel has not been physically present during the taking of the testimony and all of the court proceedings that preceded the request … [O]nce the trial court … appoint[s] standby counsel, that standby counsel must be physically present in the courtroom from the time of appointment through all proceedings until the proceedings conclude." Parson, 457 N.W.2d at 263. Where the child proceeds pro se, it is the preferred practice for counsel to remain at the back of the courtroom and be available for consultation. Savior, 480 N.W.2d at 694-95; Parson, 457 N.W.2d at 263; Lande, 376 N.W.2d at 485. Moreover, standby counsel must be present at all bench and chambers conferences, even where the child is excluded. State v. Richards, 495 N.W.2d 187, 196 (Minn. 1992).

Minn. R. Juv. Del. P. 3.02, subd. 2 requires a court to appoint counsel for a child charged with a misdemeanor in a delinquency proceeding 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.

In State v. Borst, 278 Minn. 388, 154 N.W.2d 888 (1967), the Minnesota Supreme Court, using its inherent supervisory powers, anticipated the United States Supreme Court's Argersinger and Scott decisions, and shortly after Gideon required the appointment of counsel even in misdemeanor cases "which may lead to incarceration in a penal institution." Id. at 397, 154 N.W.2d at 894. Accord City of St. Paul v. Whidby, 295 Minn. 129, 203 N.W.2d 823 (1972); State v. Collins, 278 Minn. 437, 154 N.W.2d 688 (1967); State v. Illingworth, 278 Minn. 484, 154 N.W.2d 687 (1967) (ordinance violation). The Borst Court relied, in part, upon Gault's ruling on the need for counsel in delinquency cases to expand the scope of the

right to counsel for adult defendants in any misdemeanor or ordinance prosecutions that could result in confinement. 278 Minn. at 392-93, 154 N.W.2d at 891. Like the Court in Gault, Borst recognized the adversarial reality of even "minor" prosecutions.

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 includes most offenses that would be misdemeanors if committed by an adult. 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. 5.04. 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. 5.04, 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.

RULE 4. WARRANTS

Rule 4.01 Search Warrants Upon Oral Testimony

Issuance of search warrants based on oral testimony is governed by Minnesota Rules of Criminal Procedure 33.04 and 36, except as modified by this Rule. If the focus of the warrant pertains to a juvenile, the court may designate on the warrant that it shall be filed in the juvenile court. When so designated, the warrant, the certified transcript of the oral application for the warrant, any longhand verbatim record, and any related documents shall be deemed to be a juvenile court record under Rule 30.

(Amended effective July 1, 2015.)

Rule 4.02 Search Warrants Upon Written Application

Issuance of search warrants based upon written application is governed by Minnesota Statutes, sections 626.04 through 626.18 and Minnesota Rules of Criminal Procedure 33.04, 33.05, and 37, except as modified by this Rule. If the focus of the warrant pertains to a juvenile, the court may designate on the warrant that it shall be filed in the juvenile court. When so designated, the search warrant, warrant application, affidavit(s) or other supporting documents and inventories, including statements of unsuccessful execution and documents required to be served shall be deemed to be a juvenile court record under Rule 30.

(Amended effective October 1, 2016.)

Rule 4.03 Warrants for Immediate Custody

Subdivision 1. Probable Cause Required. Probable cause may be established as authorized by Rule 6.05.

Subd. 2. Warrant for Delinquent Offenders. The court may issue a warrant for immediate custody of a delinquent child or a child alleged to be delinquent if the court finds that there is probable cause to believe that the child has committed a delinquent act as defined by Minnesota Statutes, section 260B.007, subdivision 6, and:

(A) the child failed to appear after having been personally served with a summons or subpoena, or reasonable efforts to personally serve the child have failed, or there is a substantial likelihood that the child will fail to respond to a summons; or
(B) the child or others are in danger of imminent harm; or
(C) the child has left the custody of the detaining authority without permission of the court; or
(D) the child has violated a court order; or
(E) the child has violated the terms of probation.

Subd. 3. Warrant for Juvenile Petty or Traffic Offenders. The court may only issue a warrant for immediate custody of a juvenile petty or juvenile traffic offender or a child alleged to be a juvenile petty or juvenile traffic offender if the court finds that there is probable cause to believe that:

(A) the child has committed a juvenile petty offense as defined by Minnesota Statutes, section 260B.007, subdivision 16 or a juvenile traffic offense as defined by Minnesota Statutes, section 260B.225; and
(B) the child failed to appear after having been personally served with a summons or subpoena, reasonable efforts to personally serve the child have failed, or there is a substantial likelihood that the child will fail to respond to a summons.

Subd. 4. Contents of Warrant for Immediate Custody. A warrant for immediate custody

shall be signed by a judge and shall:

(A) order the child to be brought immediately before the court or the child to be taken to a detention facility in accordance with Rule 5.02, subdivisions 3 and 4, to be detained pending a detention hearing or the child to be transferred to an individual or agency, including but not limited to any welfare agency or hospital as the welfare of the child might require;

(B) state the name and address of the child, or if unknown, designate the child by any name or description by which the child can be identified with reasonable certainty;

(C) state the age and sex of the child, or, if the age of the child is unknown, that the child is believed to be of an age subject to the jurisdiction of the court;

(D) state the reasons why the child is being taken into custody;

(E) where applicable, state the reasons for a limitation on the time or location of the execution of the warrant; and

(F) state the date when issued, and the county and court where issued.

Subd. 5. Who May Execute. The warrant for immediate custody may only be executed by a peace officer authorized by law to execute a warrant.

Subd. 6. How Executed. The warrant for immediate custody shall be executed by taking the child into custody.

Subd. 7. Where Executed. The warrant for immediate custody may be executed at any place in the state except where prohibited by law, unless the judge who issues the warrant limits in writing on the warrant the location where the warrant may be executed.

Subd. 8. When Executed. A warrant may be executed at any time unless the judge who issues the warrant limits in writing on the warrant the time during which the warrant may be executed. If the offense is a delinquency misdemeanor, juvenile petty offense or juvenile traffic offense, the child may not be taken into custody on Sunday or between the hours of 10:00 p.m. and 8:00 a.m. on any other day except by direction of the judge.

Subd. 9. Possession of Warrant. A warrant for immediate custody need not be in the peace officer's possession at the time the child is taken into custody.

Subd. 10. Advisory. When a warrant is executed, the child and the child's parent(s), legal guardian or legal custodian, if present, shall immediately be informed of the existence of the warrant for immediate custody and as soon as possible of the reasons why the child is being taken into custody.

(Amended effective July 1, 2015.)

Comment--Rule 4

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 charging document, any supporting documents 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 delinquency misdemeanors, juvenile petty and juvenile traffic offenses should not ordinarily justify taking a child into immediate custody during the proscribed period of time.

RULE 5. DETENTION

Rule 5.01 Scope and General Principles

Rule 5 governs all physical liberty restrictions placed upon a child before trial, disposition, or pending a probation violation hearing. For purposes of this Rule, the day of the act or event from which the designated period of time begins to run shall be included.

Rule 5.02 Definitions

Subdivision 1. Detention. Detention includes all liberty restrictions that substantially affect a child's physical freedom or living arrangements before trial, disposition or pending a probation violation hearing. A child's physical liberty is restricted when

(A) the child is taken into custody;
(B) the court orders detention of the child;
(C) the court orders out-of-home placement; or
(D) the court orders electronic home monitoring or house arrest with substantial liberty restrictions.

Subd. 2. Detaining Authority. The detaining officer, the detaining officer's supervisor, the person in charge of the detention facility, the prosecuting attorney or the court is a detaining authority for the purposes of this rule.

Subd. 3. Place of Detention for Juvenile Delinquent Offenders. A place of detention for a juvenile delinquent offender can be any one of the following places:

(A) the child's home subject to electronic home monitoring or house arrest with substantial liberty restrictions;
(B) a foster care or shelter care facility;
(C) a secure detention facility;
(D) a detoxification, chemical dependency, or psychiatric facility;
(E) an adult jail; or
(F) any other place of detention.

Subd. 4. Place of Detention for Juvenile Petty or Traffic Offenders. A place of detention for a juvenile petty or traffic offender can be any one of the following places:

(A) a child's relative;
(B) a standby or temporary custodian under Minnesota Statutes, chapter 257B; or
(C) a shelter care facility.

(Amended effective July 1, 2015.)

Rule 5.03 Detention Decision

Subdivision 1. Presumption for Unconditional Release. The child shall be released unless:

(A) the child would endanger self or others;
(B) the child would not appear for a court hearing;
(C) the child would not remain in the care or control of the person into whose lawful custody the child is released; or
(D) the child's health or welfare would be immediately endangered.

There is a presumption that a child will not appear for a court hearing when the person to whom the child is to be released refuses to sign a written promise to bring the child to court.

Subd. 2. Detention Factors. The following non-exclusive factors may justify a decision to detain a child:

(A) the child is charged with the misdemeanor, gross misdemeanor or felony offense of arson, assault, prostitution or a criminal sexual offense;
(B) the child was taken into custody for an offense which would be a presumptive commitment to prison offense if committed by an adult, or a felony involving the use of a firearm;
(C) the child was taken into custody for additional felony charges while other delinquency charges are pending;
(D) the child was taken into custody for a felony and, as a result of prior delinquency adjudication(s), has received an out-of-home placement;
(E) the child was an escapee from an institution or other placement facility to which the court ordered the child;
(F) the child has a demonstrable recent record of willful failure to appear at juvenile

proceedings;

(G) the child is a fugitive from another jurisdiction; or

(H) the above factors are not met but the detaining authority documents in writing, objective and articulable reasons why the child's welfare or public safety would be immediately endangered if the child were released.

Subd. 3. Discretion to Release Even if One or More Factors are Met. Even if a child meets one or more of the factors in Rule 5.03, subdivisions 1 and 2, the detaining authority has broad discretion to release that child before the detention hearing if other less restrictive measures would be adequate.

Subd. 4. Factors Which Can Not Support Detention Decision. In deciding whether detention is justified, the detaining authority shall not consider the child or the child's family's race, color, gender, sexual orientation, religion, national origin, economic or public assistance status, family structure or residential mobility.

Rule 5.04 Release or Continued Detentions

Subdivision 1. For Child Taken Into Custody Pursuant to Court Order or Warrant.

(A) *Detention Required.* Unless the court orders an earlier release, the child may be detained for thirty-six (36) hours after being taken into custody, excluding Saturdays, Sundays and holidays.

(B) *When Release is Mandatory.* Unless the time for the detention hearing is extended by twenty-four (24) hours pursuant to Rule 5.07, subdivision 7, the child shall be released no later than thirty-six (36) hours after being taken into custody, excluding Saturdays, Sundays and holidays, unless the court orders continued detention following a detention hearing commenced within that time period.

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

(A) *Exception Permitting Detention.* The officer taking a child into custody without a court order or warrant shall release the child unless the officer reasonably believes, after consideration of the factors set out in Rule 5.03, that

(1) the child would endanger self or others;

(2) the child would not appear for a court hearing;

(3) the child would not remain in the care or control of the person into whose lawful custody the child is released; or

(4) the child's health or welfare would be immediately endangered.

There is a presumption that a child will not appear for a court hearing when the person to whom the child is to be released refuses to sign a written promise to bring the child to court.

(B) *Discretionary Release Any Time Before Detention Hearing.* The detaining authority has discretion to release a child any time before the detention hearing if other less restrictive measures would be adequate.

(C) *When Release is Mandatory.* Unless the time for the detention hearing is extended by twenty-four (24) hours pursuant to Rule 5.07, subdivision 7, the child shall be released no later than thirty-six (36) hours after being taken into custody, excluding Saturdays, Sundays and holidays, unless the court orders continued detention following a detention hearing commenced within that time period.

Subd. 3. Child Taken Into Custody and Placed in an Adult Jail or Municipal Lockup.

(A) *Generally.* The child shall be released no later than twenty-four (24) hours after being taken into custody, excluding Saturdays, Sundays and legal holidays, unless within that time period, a charging document has been filed with the court and the court has determined at a detention hearing that the child shall remain detained. If the court's decision at the detention hearing is that the child shall remain detained, the child shall be detained at a juvenile facility in accordance with Rule 5.02, subdivision 3. The court may extend the time for a detention hearing for good cause pursuant to Rule 5.07, subdivision 7 only if a charging document has been filed with the court within twenty-four (24) hours of the child being taken into custody, excluding Saturdays, Sundays and legal holidays.

(B) *Adult Jail or Municipal Lockup in a Standard Metropolitan Statistical Area.* If the jail or municipal lockup is in a standard metropolitan statistical area, the child shall be held no longer than six (6) hours after the child was taken into custody including Saturdays, Sundays and holidays unless a charging document has been filed with the court within that time period and the court has determined after a detention hearing that the child shall remain detained. If the court's decision at the detention hearing is that the child shall remain detained, the child shall be detained at a juvenile facility in accordance with Rule 5.02, subdivision 3. The time for a detention hearing shall not be extended.

Subd. 4. Probable Cause Determination.

(A) *Time Limit.* The child shall be released no later than forty-eight (48) hours after being taken into custody without a court order or warrant signed by a judge, including the day the child was detained, Saturdays, Sundays and legal holidays, unless the court determines there is probable cause to believe the child committed the offense(s) alleged.

(B) *Application and Record.* The facts establishing probable cause to believe the offense(s) was committed and that the child committed the offense(s) shall be presented to the judge upon oath, either orally or in writing, or signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116. Oral testimony shall be

recorded and retained by the judge. Facts that are contained in a written document may be presented to the judge by telephone, video, or other electronic means. If probable cause is determined on facts contained in a written document and the judge is not available to sign the determination, the document shall be presented to the judge for signature within two (2) business days. The judge shall be advised if a prior request for a probable cause determination was made and turned down relative to the same incident.

(C) *Approval of Prosecuting Attorney.* No request for a probable cause determination may proceed without approval by the prosecuting attorney. The person requesting the probable cause determination shall, under oath or signed under penalty of perjury pursuant to Minnesota Statutes section 358.116, state that the prosecutor approves the request. If the prosecutor is unavailable, the court may make the probable cause determination if the matter should not be delayed.

(D) *Determination.* After the information is presented, the court shall determine whether there is probable cause to believe an offense(s) was committed and that the child committed the offense(s). If probable cause is found, the court may order continued detention pursuant to Rule 5, and release the child with conditions or with no conditions. A written determination of probable cause shall be filed with the court and a copy provided to the child and child's counsel.

Subd. 5. Release of Any Child at Any Time by the Court and Conditions of Release. Only the court may impose conditions of release. The court at any time may release a child and may impose one or more of the following conditions:

(A) require the parent(s), legal guardian, legal custodian or child to post bail;
(B) place restrictions on the child's travel, associations or place of abode during the period of the child's release; or
(C) electronic home monitoring or any other conditions deemed reasonably necessary and consistent with factors for detaining the child.

Unless the time for the detention hearing is extended by twenty-four (24) hours pursuant to Rule 5.07, subdivision 7, all conditions of release which restrict the physical liberty of a child terminate after thirty-six (36) hours excluding Saturdays, Sundays and legal holidays unless a detention hearing has commenced and the court has ordered continued detention.

Subd. 6. Release to Custody of Parent or Other Responsible Adult. A child released from a place of detention shall be released to the custody of the child's parent(s), legal guardian, or legal custodian if deemed appropriate by the detaining authority. If these individuals are unavailable or deemed inappropriate, the detaining authority may release the child to a member of the extended family or kinship network or other suitable adult deemed appropriate by the detaining authority and acceptable to the child.

(Amended effective July 1, 2015.)

Rule 5.05 Detention Reports

Subdivision 1. Report by Detaining Authority. When a child has been detained, the detaining officer or his agent shall file a signed report with the court and deliver a copy to the supervisor of the facility containing the following information:

(A) the time the child was taken into custody and the reasons why the child was taken into custody;
(B) the time the child was delivered to the place of detention and the reasons why the child is being held there;
(C) a statement that the child and the child's parent(s), legal guardian or legal custodian have received the notification required by Minnesota Statutes, section 260B.176, subdivisions 3 and 5, including the advisory that every child at a detention hearing has a right to counsel at public expense pursuant to Rule 3.02, subdivision 6, and the time such notification was given to each or the efforts made to notify them.

Subd. 2. Report by Supervisor of the Secure Detention Facility or Shelter Care Facility. When a child has been delivered to a secure detention facility or shelter care facility, the supervisor of the facility shall file with the court a signed report acknowledging receipt of the child and containing a statement that the child and the child's parent(s), legal guardian or legal custodian have received the notification required by Minnesota Statutes, section 260B.176, subdivisions 3 and 5 and the time such notification was given to each or the efforts made to notify them.

Subd. 3. Timing of Reports. The reports shall be filed with the court on or before the court day following detention of the child or by the time of the detention hearing, whichever is earlier.

Subd. 4. Notice to Child's Counsel; Child's Counsel Access to Child and Reports. If a child is detained pending a detention hearing in a place of detention other than home detention or at home on electronic home monitoring, the court administrator shall give the Office of the Public Defender or the child's attorney, if privately retained, notice that the child is in custody, notice of the detention hearing and provide copies of the reports filed with the court by the detaining officer and the supervisor of the place of detention. Child's counsel shall have immediate and continuing access to the child.

Rule 5.06 Identification Procedures

Subdivision 1. Photographing.

(A) *Generally.* A detained child may be photographed when the child is taken into custody in accordance with the laws relating to arrests. All children in custody alleged to have committed a felony or gross misdemeanor shall be photographed without a court order.

(B) *Report.* A report stating the name of the child photographed and the date the

photograph was taken shall be filed with the court.

Subd. 2. Fingerprinting.

(A) *Generally.* All children in custody alleged to have committed a felony or gross misdemeanor shall be fingerprinted without court order. Otherwise, a court order is required pursuant to Rule 10.

(B) *Report.* A report stating the name of the child fingerprinted and the date of the fingerprinting shall be filed with the court.

Subd. 3. Line-Up.

(A) *Generally.* A detained child may be placed in a line-up. A child may choose not to participate in a line-up which is not related to the matter for which the child is detained unless ordered by the court to appear in a line-up pursuant to Rule 10.05, subdivision 2(A).

(B) *Right to Counsel During Line-Up for Child Alleged to be Delinquent.* A child has the right to have counsel present when placed in a line-up related to a delinquent act for which the child has been taken into custody unless exigent circumstances exist such that providing counsel would unduly interfere with a prompt investigation of the crime. When a delinquency petition has been filed, counsel for the child shall be present for any line-up. Any identification evidence obtained without the presence of counsel shall be inadmissible, unless the line-up occurred before the filing of the petition and exigent circumstances existed preventing the presence of counsel.

(C) *Report.* A report stating the name of the children who participated in the line-up and the date of the line-up shall be filed with the court.

Rule 5.07 Detention Hearing

Subdivision 1. Time and Filing. For a child detained in a secure juvenile detention facility or shelter care facility, the court shall commence a detention hearing within thirty-six (36) hours of the time the child was taken into custody, excluding Saturdays, Sundays, and holidays, unless a charging document has been filed and the judge or referee determines pursuant to Minnesota Statutes, section 260B.178 that the child shall remain in detention. For a child detained in an adult jail or municipal lockup, the court shall commence a detention hearing within twenty-four (24) hours of the time the child was taken into custody, excluding Saturdays, Sundays, and holidays, or within six (6) hours of the time the child was taken into custody if the child is detained in an adult jail or municipal lockup in a standard metropolitan statistical area, including Saturdays, Sundays, and holidays, unless a charging document has been filed and the judge or referee determines pursuant to Minnesota Statutes, section 260B.178 that the child shall remain in detention.

The following documents shall be filed with the court before the detention hearing:

(A) a report or reports that the child is being held in detention filed pursuant to Rule 5.05; and
(B) a charging document with probable cause.

Subd. 2. Notice.

(A) *Child, Child's Counsel, Prosecuting Attorney, Child's Parent(s), Legal Guardian or Legal Custodian and Spouse of the Child.* The court shall inform the child, the child's counsel, the prosecuting attorney, the child's parent(s), legal guardian or legal custodian and spouse of the child of the time and place of the detention hearing pursuant to Rule 25. Failure to inform the parent(s), legal guardian or legal custodian or spouse of the child or their absence at the hearing shall not prevent the hearing from being conducted or invalidate an order of detention.

(B) *Victim.* If a detained child is charged with a crime of violence against a person or attempting a crime of violence against a person, the court administrator shall make reasonable and good faith efforts to notify the victim of the alleged crime of:
(1) the time and place of the detention hearing;
(2) the name and telephone number of a person that can be contacted for additional information; and
(3) the right of the victim and victim's family to attend the detention hearing.

If the victim is incapacitated or deceased, notice must be given to the victim's family. If the victim is a minor, notice must be given to the victim's parent, legal guardian or legal custodian.

Subd. 3. Advice of Rights. At the beginning of the detention hearing, the court shall advise all persons present of:
(A) the reasons why the child was taken into custody;
(B) the allegations of the charging document;
(C) the purpose and scope of the detention hearing;
(D) the right of the child to be represented by counsel at the detention hearing and at every other stage of the proceedings, and the right of a child alleged to be delinquent to counsel at public expense; and
(E) the right of the child to remain silent.

Subd. 4. Evidence. The court may admit any evidence including reliable hearsay and opinion evidence that is relevant to the decision whether to detain the child. The court may not admit evidence of privileged communications.

Subd. 5. Findings Necessary for Continued Detention. A court may detain a child beyond the time set in subdivision 1 of this rule if, after a hearing, the court finds:
(A) probable cause to believe the child committed the offense(s) alleged pursuant to Rule 5.04, subdivision 4; and
(B) there is reason to believe that if the child were released, after consideration of the factors set forth in Rule 5.03, that:

(1) the child would endanger self or others;
(2) the child would not appear for a court hearing;
(3) the child would not remain in the care or control of the person into whose lawful custody the child is released; or
(4) the child's health or welfare would be immediately endangered.

There is a presumption that a child will not appear for a court hearing when the person to whom the child is to be released refuses to sign a written promise to bring the child to court.

Subd. 6. Order.

(A) *Release.* The child shall be released if the findings required by Rule 5.07, subdivision 5 are not made.

(B) *Detention.* If the findings required by Rule 5.07, subdivision 5 are made, the court may order continued detention or release with the posting of bail or bond and other conditions deemed appropriate by the court. An order stated on the record shall also be reduced to writing by the court within five (5) days of entry of the order.

(C) *Notice of Next Hearing.* On the record, the court shall advise all persons present of the date, time, and place of the next hearing. If persons entitled to participate at the next hearing are not present, the court shall provide those persons with notification of the next hearing by written notice of hearing. If the child is released, the child may be required to sign a promise to appear.

Subd. 7. Extension of Time for Detention Hearing. For good cause shown, the court may extend the time for a detention hearing by twenty-four (24) hours on written application of the prosecuting attorney, if the application for extension is filed with the court within the time prescribed by this rule. The court may extend the time for one additional twenty-four (24) hour period upon a second written application being filed within the extended time previously ordered by the court.

(Amended effective Jan. 1, 2008)

Rule 5.08 Detention Review

Subdivision 1. Informal Review. An informal review of detention shall be made by the court every eight (8) days, excluding Saturdays, Sundays, and holidays, of the child's detention. If the circumstances justifying detention have not changed, detention may be continued. If the circumstances justifying detention have changed, detention may be modified with consent of the child, child's counsel, and the prosecuting attorney. An order stated on the record shall also be reduced to writing by the court within five (5) days of entry of the order.

Subd. 2. Formal Review. The court may schedule a formal review of detention at any time.

(A) *Request by Child, Child's Counsel or Prosecuting Attorney.* If the court finds a

substantial basis exists for the request to schedule a hearing to review detention, a hearing shall be scheduled as soon as possible, and at least within eight (8) days of the request.

(B) *Notice.* The person requesting a formal review shall make the request by motion as provided in Rule 27.

(C) *Relevant Evidence.* Subject to constitutional limitations and privileged communications, the court may admit any evidence, including reliable hearsay and opinion evidence that is relevant to the decision regarding continued detention of the child.

(D) *Continued Detention.* The court may continue the child in detention if the court makes findings pursuant to Rule 5.07, subdivision 5. An order stated on the record shall also be reduced to writing by the court within five (5) days of entry of the order.

(Amended effective Jan. 1, 2008)

Comment--Rule 5

There is a presumption in favor of releasing an accused child unconditionally. If the child cannot be released unconditionally, the least restrictive liberty restriction is favored. The American Bar Association's Juvenile Justice Standards Relating to Interim Status: The Release Control, and Detention of Accused Juvenile Offenders Between Arrest and Disposition (1980) describes the general principles governing liberty restrictions. These general principles and policy considerations do not determine the outcomes of specific cases. Rather, they provide the process framework within which law enforcement and intake personnel, prosecuting attorneys and judges decide individual cases. When these decision makers decide whether or not to place a child in detention or to impose other physical liberty restrictions, the following policy considerations apply: to the greatest extent possible, any interim liberty restrictions should respect the autonomy interests of the accused child and family, ensure equality of treatment by race, class, ethnicity, and sex, ensure the child promptly receives access and continuing access to legal assistance, protect the child's access to education to the extent reasonably possible, and ensure public safety.

The primary concern of this rule is a child's physical liberty and living arrangements pending trial and disposition. For purposes of this rule, other non-physical limitations on a child's autonomy, such as a court order to avoid contact with victims or witnesses, to attend school, to remain under the control of parents or custodians, or the like, do not constitute liberty restrictions that invoke either the procedures of this rule or the expedited timing of procedures for youths physically detained or restricted.

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. Juv. 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 a juvenile facility in accordance with Minn. R. Juv. Del. P. 5.02, subd. 3. Id. See also 42 U.S.C.A. section 5633(a)(14) (1995). The placement options in Minn. R. Juv. Del. P. 5.02, subd. 4 are not referenced in Minn. R. Juv. Del. P. 5.04, subd. 3(A) and (B) because the placement limitations in Minn. Stat. § 260B.181, subds. 2 and 3 preclude the initial detention of juvenile petty offenders in an adult jail or municipal lockup.

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. 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.

RULE 6. CHARGING DOCUMENT

Rule 6.01 Generally

A charging document is a petition or a citation, and includes charging documents filed in paper form, or charging documents or data filed by electronic means authorized by the State Court Administrator.

(Amended effective July 1, 2015.)

Rule 6.02 Citation

Subdivision 1. Generally. Juvenile petty offenses as defined by Minnesota Statutes, section 260B.007, subdivision 16, delinquency misdemeanors, juvenile traffic offenses and gross misdemeanors under Minnesota Statutes, chapter 169A may be charged by citation. Before entering a plea of guilty or not guilty to alleged misdemeanor or gross misdemeanor charge(s), the child may demand that a petition be filed with the court. If a petition is demanded, the prosecuting attorney shall have thirty (30) days to file the petition unless the child is in custody. The prosecuting attorney shall have ten (10) days to file a petition if a demand is made by a child in custody or the child shall be released.

Subd. 2. Filing. Before a citation may be filed with the court, it shall be screened by the prosecuting attorney for diversion eligibility. A citation must be filed by electronic means authorized by the State Court Administrator when the technology is available, otherwise a citation may be filed in a paper form approved by the State Court Administrator. Filing a citation gives the juvenile court jurisdiction over the matter.

Subd. 3. Contents of Citation. Citations shall contain:

(A) the name, address, and date of birth of the child;
(B) the name and address of the parent, legal guardian or legal custodian of the child;
(C) the offense charged and a reference to the statute or local ordinance which is the basis for the charge;
(D) the time and place and county of the alleged offense;
(E) a designation of the case a delinquency, a juvenile petty offense, or a juvenile traffic offense; and
(F) other administrative information published by the State Court Administrator.

Subd. 4. Notice of Court Appearance. When a citation is filed with the court, the court administrator shall promptly schedule the matter for hearing and send notices as provided by Rule 25.

(Amended effective July 1, 2015.)

Rule 6.03 Petition

Subdivision 1. Generally. A child alleged to be delinquent because of a felony or gross misdemeanor offense (except gross misdemeanors under Minnesota Statutes, chapter 169A, which may be charged by citation) shall be charged by petition. A child alleged to be delinquent because of a misdemeanor offense may be charged by petition. A child charged with a juvenile petty offense or a juvenile traffic offense may be charged by petition.

Subd. 2. Filing. Each petition shall be signed by the prosecuting attorney before it is filed

with the court. The signature of the prosecuting attorney shall be an acknowledgement that the form of the petition is approved and that reasonable grounds exist to support the petition. A delinquency petition may be filed without the prosecutor's signature if the prosecutor is unavailable and a judge determines that filing and the issuance of process should not be delayed. A petition must be filed by electronic means authorized by the State Court Administrator when the technology is available, otherwise a petition may be filed in paper form. Electronic signature of petitions is governed by Minnesota Rule of Criminal Procedure 1.06, subdivision 3.

Subd. 3. Contents of the Delinquency Petition. Every petition alleging a child is delinquent shall contain:

(A) a concise statement alleging the child is delinquent;
(B) a description of the alleged offense and reference to the statute or ordinance which was violated;
(C) the name, date of birth, and address of the child;
(D) the names and addresses of the child's parent(s), legal guardian, legal custodian, or nearest known relative;
(E) the name and address of the child's spouse; and
(F) other administrative information authorized by the Supreme Court Juvenile Delinquency Rules Committee and published by the State Court Administrator.

Subd. 4. Separate Counts. A petition may allege separate counts, whether the alleged delinquent acts arise out of the same or separate behavioral incidents.

Subd. 5. Contents of Petition Alleging Juvenile Petty Offender or Juvenile Traffic Offender. Every petition alleging a child is a juvenile petty offender or alleging a child is a juvenile traffic offender shall contain:

(A) a concise statement alleging that the child is a juvenile petty offender or a juvenile traffic offender;
(B) the name, address, date of birth, and for juvenile traffic offenders, the drivers license number of the child, if known;
(C) the name and address of the parent(s), legal guardian, or legal custodian of the child;
(D) a description of the offense charged and reference to the statute or ordinance which is the basis for the charge;
(E) the date, county, and place of the alleged offense; and
(F) other administrative information authorized by the Supreme Court Juvenile Delinquency Rules Committee and published by the State Court Administrator.

(Amended effective July 1, 2015.)

Rule 6.04 Amendment

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 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.

Subd. 2. Prohibited.

(A) A charging document alleging a child is delinquent shall not be amended to allege a child is in need of protection or services.

(B) A charging document alleging a juvenile petty or traffic offense shall not be amended to allege the child is delinquent.

(C) A petition alleging that a child is in need of protection or services shall not be amended to allege a delinquency, juvenile petty offense or juvenile traffic offense.

(Amended effective July 1, 2015.)

Rule 6.05 Probable Cause

Subdivision 1. Establishing Probable Cause. The facts establishing probable cause may be set forth in writing in the charging document. No police reports or supporting documents may be attached to the charging document at the time of filing to establish probable cause. Probable cause may also be established by subsequently filed police reports, sworn affidavits, or written statements signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, or by sworn testimony presented to the court. If police reports are subsequently filed in support of the charging document to establish probable cause, the child shall have the right to demand a statement establishing probable cause with specificity. Once demanded, the prosecuting attorney shall have ten (10) days to file with the court and serve on opposing counsel, the specific statement of probable cause. If testimony is presented, a verbatim record of the proceedings shall be made and a transcript of the proceedings prepared and filed with the court.

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

(A) before the court may issue a warrant pursuant to 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 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.

Subd. 3. Motion to Dismiss for Lack of Probable Cause. The child may bring a motion to dismiss the charging document for lack of probable cause. The probable cause determination is governed by the procedure set out in Minnesota Rules of Criminal Procedure 11.04.

Subd. 4. Dismissal. The court shall dismiss a charging document when a showing of probable cause has not been made. A dismissal for failure to show probable cause shall not prohibit the filing of a new charging document and further proceedings on the new charging document.

(Amended effective July 1, 2015.)

Rule 6.06 Procedure on Filing a Charging Document with the Court

Subdivision 1. Dismissal. The court shall dismiss a charging document if it does not allege an act of delinquency as defined by Minnesota Statutes, section 260B.007, subdivision 6, a juvenile petty offense as defined by Minnesota Statutes, section 260B.007, subdivision 16 or a juvenile traffic offense as defined by Minnesota Statutes, section 260B.225.

Subd. 2. Arraignment. When a charging document is filed, the court administrator shall promptly schedule an arraignment on the charging document and send notices pursuant to Rule 25.

Subd. 3. Payment of Citation in Lieu of Court Appearance. When a child is charged by citation with an offense or offenses listed on the Statewide Payables List, the child may enter a plea of guilty before the scheduled arraignment date by paying the fine amount established by the Judicial Council, and any applicable fees and surcharges, and by submitting a Plea and Waiver Form signed or acknowledged by the child and the child's parent.

The Plea and Waiver Form shall advise the child that payment constitutes a plea of guilty and an admission (a) that the child understands the nature of the offense alleged; (b) that the child makes no claim of innocence; (c) that the child's conduct constitutes the offense(s) to which the child is pleading guilty; (d) that the plea is made freely, under no threats or promises, and (e) that the child has the following rights which the child voluntarily waives:

(1) the right to the appointment of counsel if the child is subject to out-of-home placement as provided in Minnesota Statutes, section 260B.235, subdivision 6;
(2) the right to trial;
(3) the presumption of innocence until the prosecuting attorney proves the charges beyond a reasonable doubt;
(4) the right to remain silent;
(5) the right to testify on the child's own behalf;
(6) the right to confront witnesses against oneself; and
(7) the right to subpoena witnesses.

The Plea and Waiver Form shall also advise the child that mandatory disposition requirements for a third or subsequent offense may require an appearance in court and may result in the imposition of certain dispositions including, but not limited to, those provided in Minnesota Statutes, section 260B.235, subdivision 6.

The Plea and Waiver Form shall be developed and maintained by the State Court Administrator.

(Adopted effective July 1, 2011.)

Rule 6.07 Dismissal by Prosecuting Attorney

The prosecuting attorney may in writing or on the record, stating the reasons therefor, dismiss a petition or citation without leave of court and an indictment with leave of court.

(Amended effective January 1, 2011.)

Rule 6.08 Dismissal by Court

If there is unnecessary delay by the prosecution in bringing a respondent to trial, the court may dismiss the petition, citation or indictment.

(Adopted effective January 1, 2011.)

Comment--Rule 6

Previously, this rule only related to petitions in juvenile court. Due in large part to the high volume of gross misdemeanor alcohol related driving offenses, the law was amended to permit tab charges and citations for these offenses to get cases to court more promptly. In 2015, all references to tab charges were removed from the rules to eliminate tab charges as a valid method of charging in juvenile cases.

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.

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, subds. 3 and 5 set forth the necessary contents of the petition. A sample petition form as well as a listing of the administrative content approved by the Juvenile Delinquency Rules Committee have been published by the State Court Administrator on the Minnesota Judicial Branch website. The reference to the Minnesota Offense Code was removed from this rule in 2015 in recognition of the possible transition away from the use of MOC codes and to another coding system that will serve the same purpose. Although the reference to the MOC codes was removed from the rules, the MOC code is still required as part of the "other administrative information" that was approved by the committee and published by the State Court Administrator. Any changes regarding what is required for coding purposes will be addressed in that document.

The references to citations filed by electronic means are intended to recognize that in some counties law enforcement has already begun to electronically file citations in juvenile cases. It is understood that electronic filing of tab charges and citations and petitions is not available statewide at this time. The rule authorizes and requires electronic filing in the

locations where the technology is available, and anticipates the expansion of the practice in other locations as facilitated by State Court Administration. Juvenile citations in paper form currently vary statewide. It is anticipated that a statewide standard will be created for use in juvenile cases, in consultation with justice agency partners, which will either be similar to or a modification to the current adult standard commonly referred to as the Statewide Standard Citation. When a statewide standard for juvenile citations is created, it will be published on the Minnesota Judicial Branch Statewide Standard Citation website and communicated statewide. Once the juvenile standard citation is available, its use will be mandatory in juvenile cases.

RULE 7. ARRAIGNMENT

Rule 7.01 Application

This rule is not applicable to proceedings on juvenile petty offenses or juvenile traffic offenses, which are governed by Rule 17.

Rule 7.02 Generally

Arraignment is a hearing at which the child shall enter a plea in the manner provided in Rule 8.

Rule 7.03 Timing

Upon the filing of a charging document, the court administrator shall promptly fix a time for arraignment and send notices pursuant to Rule 25.

Subdivision 1. Child in Custody. The child in custody may be arraigned at a detention hearing and shall be arraigned no later than five (5) days after the detention hearing. The child has the right to have a copy of the charging document for three (3) days before being arraigned.

Subd. 2. Child Not in Custody. The child not in custody shall be arraigned not later than thirty (30) days after the filing of the charging document. The child has the right to have a copy of the charging document for three (3) days before being arraigned.

Rule 7.04 Hearing Procedure

Subdivision 1. Initial Procedure. At the commencement of the hearing, the court shall on the record:

(A) verify the name, age, and residence of the child who is charged;
(B) determine whether all necessary persons are present and identify those present for the record;
(C) determine whether notice requirements have been met and if not, whether the affected persons waive notice;
(D) determine whether the child is either represented by counsel or waives counsel in the

manner provided by Rule 3;

(E) if the child appears without counsel, and the court determines the child has properly waived the child's right to counsel, the court shall advise the child of all trial rights and other rights provided by these rules;

(F) explain to the child and the child's parent(s), legal guardian or legal custodian, if present, the child's right to remain silent in this and subsequent appearances before the court; and

(G) if two or more children are charged jointly with the same offense, advise the child of the danger of dual representation pursuant to Rule 3.03.

Subd. 2. Reading of Allegations of Charging Document. Unless waived by the child, the court shall read the allegations of the charging document to the child and determine that the child understands them, and if not, provide an explanation.

Subd. 3. Motions. The court shall hear and make findings on any motions regarding the sufficiency of the charging document, including its adequacy in stating probable cause of charges made, and the jurisdiction of the court, without requiring the child to plead guilty or not guilty to the charges stated in the charging document. A challenge on probable cause shall not delay the setting of trial proceedings in cases where the child has demanded a speedy trial.

Subd. 4. Response to Charging Document. After considering the wishes of the parties to proceed later or at once, the court may continue the arraignment without requiring that the child plead guilty or not guilty to charges stated in the charging document.

(Amended effective July 1, 2015.)

Comment--Rule 7

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.

RULE 8. PLEAS

Rule 8.01 Application

Subdivision 1. Juvenile Petty and Traffic Proceedings. Pleas in juvenile petty or juvenile traffic proceedings are governed by Rule 17.06.

Subd. 2. Extended Jurisdiction Juvenile Proceedings. Pleas in extended jurisdiction juvenile proceedings are governed by Rule 19.10, subdivision 5 and Minnesota Rules of Criminal Procedure 15.

Subd. 3. Competency Proceedings. Any child subject to competency proceedings pursuant to Rule 20 shall not be permitted to enter a plea until the court determines that the child is competent.

(Amended effective January 1, 2007.)

Rule 8.02 Generally

If the child pleads not guilty to charges alleged in the charging document, the court shall conduct proceedings in accordance with Rules 9 through 16. If the child remains silent when confronted with charges, or if the court refuses to accept a guilty plea by the child, the court shall proceed in the same manner as if the child pled not guilty.

Rule 8.03 Plea of Not Guilty Without Appearance

Except when the child is in detention, the court may permit a written plea of not guilty or a plea of not guilty on the record to be entered by child's counsel without the personal appearance of the child, child's parent(s), legal guardian or legal custodian or their counsel. The child's counsel shall immediately furnish a copy of the written plea of not guilty to the prosecuting attorney.

(Amended effective July 1, 2015.)

Rule 8.04 Plea of Guilty

Subdivision 1. Waiver of Right to Trial. The court shall not accept a child's plea of guilty until first determining, the following, under the totality of the circumstances, and based on the child's statements, whether on the record or contained in a written document signed by the child and the child's counsel:

(A) *Charges in Charging Document; Factual Basis for Plea.* That the child understands the charges stated in the charging document, and the essential elements of each charge, and that there is a factual basis for the guilty plea;

(B) *Right to Trial*. That the child understands the child's right to have a trial, that is, to require proof of all elements of each offense stated in the charging document, and that this includes an understanding of the following related rights:

(1) the right to be presumed innocent of each charge until and unless the petitioner succeeds in proving beyond a reasonable doubt that the child is guilty;

(2) the right to remain silent during trial proceedings if the child wishes and the right of the child to testify on the child's own behalf if the child wants to;

(3) the right to call witnesses to testify on the child's behalf, including the right to use court subpoenas to require that witnesses for the child attend the trial; and

(4) the right to hear the testimony of all witnesses called by the prosecuting attorney, and to cross-examine these witnesses;

(C) *Dispositions*. That the child understands the powers of the court to make a disposition if the court finds that the allegations in the charging document are proved, including the child's understanding that:

(1) the court's powers range up to the most severe step of placing custody of the child in an institution;

(2) the court's disposition could be for a duration ranging upward to the time the

child attains age 19; and

(3) the court can modify an initial disposition, even repeatedly, for a term ranging up to the time the child attains age 19; and

(4) the child understands the potential future consequences if the court finds that the allegations in the charging document are proved, including the child's understanding of:

(a) the effect of the finding on sentencing of the child if the child, when an adult, is convicted of an adult offense; and

(b) the effect of the finding in the event the child commits any further offenses while a juvenile, including the prospects for certification of the child for an adult court prosecution or for prosecution in juvenile court as an extended jurisdiction juvenile;

(D) *Right to Counsel*. If a child charged with a misdemeanor in a delinquency matter remains without counsel or with only standby counsel, that the child understands the continued right to be represented by counsel, and understands that counsel:

(1) could give the child further information and advice on the child's rights and on the choice to plead guilty or not guilty to the offenses in the charging document; and

(2) could assist the child during a trial, to protect all rights of the child that arise in the course of a trial;

(E) *Free Choice*. That any plea of guilty is made freely, and that no one has made either threats or promises to the child to encourage a plea of guilty other than those that the parties have disclosed to the court; and

(F) *No Claim of Innocence.* That the child is not making any claim of innocence.

Subd. 2. Withdrawal of Plea. The child may, on the record or by written motion filed with the court, request to withdraw a plea of guilty. The court may allow the child to withdraw a guilty plea

(A) before disposition, if it is fair and just to do so, giving due consideration to the reasons the child gives and any prejudice that withdrawal of the plea would cause because of actions taken in reliance on the child's plea; or

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

Subd. 3. Plea to a Lesser Offense or a Different Offense. With the consent of the prosecuting attorney and the approval of the court, the child shall be permitted to enter:

(A) a plea of guilty to a lesser included offense or to an offense of lesser degree, or

(B) a plea of guilty to a different offense than alleged in the original charging document.

A plea of guilty to a lesser included offense or to an offense of lesser degree may be entered without an amendment of the charging document. If a plea to different offense is accepted, the charging document must be amended on the record or a new charging document must be filed with the court.

Subd. 4. Acceptance or Nonacceptance of Plea of Guilty. The court shall make a finding within fifteen (15) days of a plea of guilty:

(A) that the plea has been accepted and allegations in the charging document have been proved; or
(B) that the plea has not been accepted.

Subd. 5. Future Proceedings. If the court accepts a plea of guilty and makes a finding that the allegations in the charging document are proved, the court shall schedule further proceedings pursuant to Rules 14 and 15.

(Amended effective July 1, 2015.)

Comment--Rule 8

It is also desirable that the child be asked to acknowledge by signing the plea petition that the child has read the questions set forth in the petition or that they have been read to the child; that the child understands them; that the child gave the answers set forth in the petition; and that they are true. Suggested forms of the plea petition are appended to the rules.

RULE 9. SETTLEMENT DISCUSSIONS AND PLEA AGREEMENTS

Rule 9.01 Generally

In cases in which it appears that it would serve the interests of the public in the effective administration of juvenile justice under the principles set forth in this rule, the prosecuting attorney may engage in settlement discussions for the purposes of reaching a settlement agreement. If the child is represented, the prosecuting attorney shall engage in settlement discussions only through the child's counsel.

Rule 9.02 Relationship between the Child and the Child's Counsel

The child's counsel shall conclude a settlement agreement only with the consent of the child and shall ensure that the decision to enter a guilty plea is ultimately made by the child.

Rule 9.03 Disclosure of Settlement Agreement

If a settlement agreement has been reached which contemplates a guilty plea, the court shall require the disclosure of the agreement and the reasons for it before the plea. The court shall reject or accept the plea on the terms of the settlement agreement. The court may postpone its acceptance or rejection until it has received the results of a pre-disposition report. If the court rejects the settlement agreement, it shall advise the parties in open court and then ask the child to either affirm or withdraw the plea.

Rule 9.04 Settlement Discussions and Agreements Not Admissible

If the child enters a guilty plea which is not accepted or which is withdrawn, neither the settlement discussions, nor the settlement agreement, nor the plea shall be received in evidence against or in favor of the child in any subsequent proceeding against the child.

RULE 10. DISCOVERY

Rule 10.01 Scope and Application

Rule 10 applies to discovery for delinquency proceedings, certification hearings and extended jurisdiction juvenile proceedings and prosecutions. Pursuant to Rule 17.07, this rule may apply, in the discretion of the court, to juvenile petty and juvenile traffic proceedings. The discovery procedures provided for by this rule do not exclude other lawful methods available for obtaining evidence.

Rule 10.02 Evidence and Identification Disclosure

The prosecuting attorney shall advise the child's counsel in writing of:

(A) any evidence against the child obtained as a result of a search, seizure, wiretapping or any form of electronic or mechanical eavesdropping;

(B) any confessions, admissions, or statements in the nature of confessions made by the child;

(C) any evidence against the child discovered as a result of confessions, admissions or statements in the nature of confessions made by the child; and

(D) any identification procedures involving the child, including but not limited to line-ups or other observations of the child and the exhibition of photographs of the child.

The notice required by this rule shall be provided by the prosecutor within five (5) days of a not guilty plea by the child. If child's counsel makes a demand for disclosure pursuant to this rule, the disclosures shall be provided within five (5) days of the demand. Evidence which becomes known to the prosecutor after the deadlines for disclosure provided here, shall immediately be disclosed to child's counsel.

Rule 10.03 Notice of Additional Offenses

The prosecuting attorney shall advise child's counsel of evidence of any additional offenses that may be offered at the trial under any exclusionary rule exceptions. Such additional acts shall be described with sufficient particularity to enable the child to prepare for the trial. The notice need not include offenses for which the child has been previously prosecuted, or that may be offered in rebuttal of character witnesses for the child or as a part of the occurrence or episode out of which the charges against the child arose. Notice of additional offenses shall be given at or before the pretrial or omnibus hearing or as soon after those hearings as the offenses become known to the prosecutor. If there is no pretrial or omnibus hearing, the notice shall be given at least seven (7) days before the trial.

Rule 10.04 Disclosure by Prosecuting Attorney

Subdivision 1. Disclosure by Prosecuting Attorney Without Order of Court. After a charging document is filed, if the child's counsel makes a request, the prosecuting attorney shall make the following disclosures within five (5) days of the receipt of the request:

(A) *Trial Witnesses.* The prosecuting attorney shall disclose to the child's counsel the names and addresses of the persons the prosecuting attorney intends to call as witnesses at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing, together with their prior record of adult convictions, any prior record of allegations of delinquency which have been proved and any prior delinquency adjudications within the actual knowledge of the prosecuting attorney. The prosecuting attorney shall permit the child's counsel to inspect and copy the witnesses' relevant written or recorded statements and any written summaries of the substance of relevant oral statements made by the witnesses to the prosecuting attorney or agents of the prosecuting attorney within the knowledge of the prosecuting attorney.

(B) *Statements of Child and Accomplices.* The prosecuting attorney shall disclose and permit the child's counsel to inspect and copy any relevant written or recorded statements made by the child and accomplices within the possession or control of the prosecuting attorney, the existence of which is known by the prosecuting attorney, and shall provide the child's counsel with the substance of any oral statements made by the child and accomplices which the prosecuting attorney intends to offer in evidence at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing.

(C) *Documents and Tangible Objects.* The prosecuting attorney shall disclose and permit the child's counsel to inspect and copy books, papers, documents, photographs and tangible objects that the prosecutor intends to introduce in evidence at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing, or which were obtained from or belong to the child and which the prosecuting attorney intends to offer as evidence at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing. If the prosecuting attorney intends to offer evidence of buildings or places at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing, the prosecuting attorney shall permit the child's counsel to inspect and photograph such buildings or places.

(D) *Reports of Examinations and Tests.* The prosecuting attorney shall disclose and permit the child's counsel to inspect and copy any results or reports of physical or mental examinations, scientific tests, experiments or comparisons made which are relevant to the case.

(E) *Record of the Child.* The prosecuting attorney shall inform the child's counsel of any prior allegations of delinquency which have been proved and of prior adjudications of

delinquency of the child within the possession or control of the prosecuting attorney.

(F) *Special Education and School Disciplinary Records.* The prosecuting attorney shall disclose and permit the child's counsel to inspect and copy all special education and school disciplinary records of the child, which were transmitted by the agency reporting the crime for consideration in charging.

(G) *Exculpatory Information.* The prosecuting attorney shall disclose to the child's counsel any material or information within the possession and control of the prosecuting attorney that tends to disprove the allegation(s).

(H) *Scope of the Prosecuting Attorney's Obligations.* The prosecuting attorney's obligations under this rule extend to material and information in the possession or control of members of the prosecuting attorney's staff and of any others who have participated in the investigation or evaluation of the matter and who report to the prosecuting attorney's office.

Subd. 2. Disclosure Upon Order of Court. Upon motion of the child's counsel, the court at any time before trial may require the prosecuting attorney to disclose to the child's counsel any information requested that is relevant to guilt, innocence or culpability of the child. If the motion is denied, the court upon application of the child shall inspect and preserve any relevant information.

Subd. 3. Information Not Subject to Disclosure by Prosecuting Attorney.

(A) *Opinions, Theories or Conclusions.* Unless otherwise provided by these rules, any legal research, records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of the prosecuting attorney or members of the prosecuting attorney's staff or officials or agents of the prosecuting attorney participating in the matter are not subject to disclosure.

(B) *Reports.* Except as provided in Rule 10.04, subdivisions 1, (C)-(G), reports, memoranda or internal documents made by the prosecuting attorney or members of the prosecuting attorney's staff or by agents of the prosecuting attorney in connection with the matter are not subject to disclosure.

(C) *Prosecution Witnesses Under Prosecuting Attorney's Certificate.* The information relative to the witnesses and persons described in Rule 10.04, subdivisions 1(A) and (B), shall not be subject to disclosure if approved by the court when the prosecuting attorney files a written certificate with the court that to do so may subject the witnesses or persons or others to physical harm or coercion, provided, however, that non-disclosure under this rule shall not extend beyond the time the witnesses are sworn to testify.

Rule 10.05 Disclosure by Child

Subdivision 1. Information Subject to Disclosure Without Order of Court. After a charging document is filed, if the prosecuting attorney makes a request, the child's counsel shall make the following disclosures within five (5) days of the receipt of the request.

(A) *Documents and Tangible Objects.* The child's counsel shall disclose and permit the prosecuting attorney to inspect and copy books, papers, documents, photographs and tangible objects which the child intends to introduce in evidence at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing. If the child's counsel intends to offer evidence of buildings or places at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing, the child's counsel shall permit the prosecuting attorney to inspect and photograph such buildings or places.

(B) *Reports of Examinations and Tests.* The child's counsel shall disclose and permit the prosecuting attorney to inspect and copy any results or reports of physical or mental examinations, scientific tests, experiments and comparisons made in connection with the particular matter within the possession or control of the child which the child intends to introduce in evidence at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing or which were prepared by a witness whom the child intends to call at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing when the results or reports relate to the testimony of the witness.

(C) *Notice of Defense, Witnesses for the Child and Record.*

(1) Notice of Defenses. The child's counsel shall inform the prosecuting attorney in writing of any defense, other than that of a denial, on which the child intends to rely at the trial, including but not limited to the defenses of self-defense, entrapment, duress, alibi, double jeopardy, statute of limitations, collateral estoppel, a defense pursuant to Minnesota Statutes, section 609.035 or intoxication. Notice of a defense of mental illness or cognitive impairment is governed by Rule 20.02, subdivision 1.

(2) Witnesses for the Child. The child's counsel shall provide the prosecuting attorney with the names and addresses of persons whom the child intends to call as witnesses at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing together with their prior record of adult convictions, any prior record of proven allegations of delinquency and any prior delinquency adjudications within the actual knowledge of the child's counsel.

(3) Statements of Witnesses for the Child. The child's counsel shall permit the prosecuting attorney to inspect and copy any relevant written or recorded

statements of the persons whom the child intends to call as witnesses at the trial, extended jurisdiction juvenile proceeding or prosecution or certification hearing and which are within the possession or control of the child's counsel and shall permit the prosecuting attorney to inspect and copy any written summaries within the knowledge of the child or the child's counsel of the substance of any oral statements made by such witnesses to the child's counsel or obtained by the child at the direction of counsel.

(4) Alibi. If the child intends to offer evidence of an alibi, the child's counsel shall also inform the prosecuting attorney of the specific place or places where the child contends the child was when the alleged delinquent act occurred and shall inform the prosecuting attorney of the names and addresses of the witnesses the child intends to call at the trial in support of the alibi.

(5) Record. The child's counsel shall inform the prosecuting attorney of any prior allegations of a delinquency which have been proved and any prior adjudications of delinquency of the child. A child shall not be required to reveal prior offenses which might result in enhancement of pending enhanceable offenses.

Subd. 2. Disclosure Upon Order of Court.

(A) *Disclosure Procedures With Child*. Upon motion of the prosecuting attorney and a showing that one or more of the following procedures will be material in determining whether the child committed the alleged act or should be certified or is an extended jurisdiction juvenile, the court at any time before a hearing may, subject to constitutional limitations, order the child to:

(1) appear in a line-up;
(2) speak for identification by witnesses to an offense or for the purpose of taking voice prints;
(3) be fingerprinted or permit palm prints or footprints to be taken;
(4) permit measurements of the child's body to be taken;
(5) pose for photographs not involving re-enactment of a scene;
(6) permit the taking of samples of blood, hair, saliva, urine and other materials of the child's body which involve no unreasonable intrusion;
(7) provide specimens of handwriting; or
(8) submit to reasonable physical or medical inspection of the child's body.

(B) *Notice of Time and Place of Discovery Procedures With Child.* Whenever the personal appearance of the child is required for procedures ordered pursuant to Rule 10.05, subdivision 2(A), the prosecuting attorney shall inform the child's counsel of the time and place of the procedure.

(C) *Medical Supervision.* Blood tests shall be conducted under medical supervision and the court may require medical supervision for any other test ordered pursuant to this

rule when the court deems such supervision necessary. Upon motion of the child's counsel, the court may order the child's appearance delayed for a reasonable time or may order that tests take place at the child's residence or some other convenient place.

(D) *Notice of Results.* The prosecuting attorney shall make available to the child's counsel the results of the procedures provided by Rule 10.05, subdivision 2(A) within five (5) days from the date the results become known to the prosecuting attorney, unless otherwise ordered by the court.

Subd. 3. Information Not Subject to Disclosure by Child.

(A) *Opinions, Theories or Conclusions.* Unless otherwise provided by these rules, any legal research, records, correspondence, reports or memoranda to the extent that they contain the opinions, theories, or conclusions of the child, the child's counsel, members of counsel's staff or counsel's agents participating in the representation of the child are not subject to disclosure.

(B) *Reports.* Except as provided by Rule 10.05, subdivisions 1(A) and (B) and (C)(2), (3), and (5), reports, memoranda or internal documents made by the child's counsel or members of counsel's staff, or counsel's agents in connection with the defense of the matter against the child are not subject to disclosure.

(Amended effective September 1, 2018.)

Rule 10.06 Regulation of Discovery

Subdivision 1. Investigations Not to be Impeded.

(A) *Prosecuting Attorney.* The prosecuting attorney or agents for the prosecuting attorney shall not advise persons having relevant material or information to refrain from discussing the case with the child's counsel or from showing opposing counsel any relevant materials nor shall they otherwise impede investigation of the case by the child's counsel.

(B) *Child, Child's Counsel or Agents for Child's Counsel.* The child, child's counsel, or agents for the child or child's counsel shall not advise persons having relevant material or information to refrain from discussing the case with opposing counsel or their agents or from showing opposing counsel any relevant materials nor shall they otherwise impede opposing counsel's investigation of the case except the child's counsel may:

(1) advise the child that the child need not talk to anyone, and

(2) advise the child's parent(s), legal guardian and legal custodian that they may refrain from discussing any relevant material or information obtained as a result of privileged communication between the child and child's counsel.

Subd. 2. Continuing Duty to Disclose. If, after compliance with any discovery rule or order, the prosecuting attorney or the child's counsel discovers additional material, information or witnesses subject to disclosure, counsel shall promptly notify the opposing side of the existence of the additional material or information and the identity of the witnesses. The prosecuting attorney and the child's counsel have a continuing duty at all times before and during trial to supply the materials and information required by these rules.

Subd. 3. Time, Place and Manner of Discovery and Inspection. An order of the court permitting discovery shall specify the time, place and manner of making the discovery and inspection permitted and may prescribe such terms and conditions as are just.

Subd. 4. Custody of Materials. Any materials furnished to the prosecuting attorney or the child's counsel under discovery rules or court orders shall remain in the custody of the prosecuting attorney or the child's counsel and shall be used only for the pending case and shall be subject to such other terms and conditions as the court may prescribe.

Subd. 5. Protective Orders. Upon a showing of reasonable cause, the court may at any time order that specified disclosures be restricted or deferred or make such other order as is appropriate. However, all materials and information to which the prosecuting attorney or the child's counsel is entitled must be disclosed in time to afford the opportunity to make beneficial use of it.

Subd. 6. Excision. If only a portion of materials are discoverable under these rules, that portion shall be disclosed. If material is excised pursuant to judicial order, it shall be sealed and preserved in the records of the court to be made available to the reviewing court in the event of an appeal or habeas corpus proceeding.

Subd. 7. Sanctions.

(A) *Continuance or Order.* If at any time it is brought to the attention of the court that the prosecuting attorney, the child or child's counsel has failed to comply with an applicable discovery rule or order, the court may upon motion, order discovery or inspection, grant a continuance, or enter such order as it deems just in the circumstances.

(B) *Contempt.* Any person who willfully disobeys a court order under these discovery rules may be held in contempt.

Subd. 8. Expense. If the child or the parent(s) of the child cannot afford the costs of discovery, these costs will be at public expense in whole or in part depending on the ability of the child or the parent(s) of the child to pay.

Rule 10.07 Taking Depositions

Subdivision 1. Deposition of Unavailable Witness. Upon motion, the court may order the deposition of a prospective witness when there is a reasonable probability the testimony of the witness

will be used at a trial or hearing and:

(A) there is a reasonable probability the witness will be unable to be present or to testify at the trial or hearing because of the witness' physical or mental illness, infirmity, or death; or

(B) the person requesting the deposition has been unable to procure the attendance of the witness by subpoena, order of the court, or other reasonable means; or

(C) there is a stipulation by counsel; or

(D) there is another reason accepted by the court.

Subd. 2. Procedure. The court may order that the deposition be taken orally before any designated person authorized to administer oaths and that any designated book, paper, document, record, recording or other material not privileged, be produced at the same time and place. The order shall direct the child to be present when the deposition is being taken.

(A) *Oral Deposition.* Depositions shall be taken upon oral examination.

(B) *Oath and Record.* The witness shall be put under oath and a verbatim record of the testimony shall be made in the manner directed by the court. In the event the court orders that the testimony at a deposition be recorded by other than stenographic means, the order shall designate the manner of recording, preserving and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If this order is made, the prosecuting attorney or the child's counsel may nevertheless arrange to have a stenographic transcription made at their own expense.

(C) *Scope and Manner of Examination--Objections, Motion to Terminate.*

(1) Consent Required. In no event shall the deposition of a child who is charged with an offense be taken without the child's consent.

(2) Scope and Manner of Taking. The scope and manner of examination and cross-examination in the taking of a deposition to be used at trial shall be the same as that allowed at the trial. The scope and manner of examination and cross-examination in the taking of a deposition to be used at a certification or extended jurisdiction juvenile hearing shall be the same as would be allowed at a certification or extended jurisdiction juvenile hearing.

(3) Objections. All objections made at the time of the examination to the qualifications of the person taking the deposition, or to the manner of taking it, or to the evidence presented or to the conduct of any person present at the depositions and any other objection to the proceedings shall be recorded by the person before whom the deposition is taken. Evidence objected to shall be taken subject to the objections unless the objection is based on the witness's use of the Fifth Amendment.

(4) Limitation upon Motion. At any time, on motion of the child's counsel or the prosecuting attorney, or of the deponent, the court may limit the taking of the deposition to that which is commensurate in cost and duration with the needs of the case, the resources available and the issues.

At any time during the taking of the deposition, on motion of the child's counsel or the prosecuting attorney, or of the deponent, and upon a showing that the examination is being conducted in bad faith or in such manner as to annoy, embarrass or oppress the deponent, the child, the child's counsel or prosecuting attorney or to elicit privileged testimony, the court which ordered the deposition taken may order the person conducting the examination to cease forthwith from taking the deposition or may limit the scope and manner of taking the deposition by ordering as follows:

(A) that certain matters not be inquired into or that the scope of examination be limited to certain matters, or

(B) that the examination be conducted with no one present except persons designated by the court.

Upon demand of the child's counsel, the prosecuting attorney or the deponent, the taking of the deposition shall be suspended for the time necessary to move for the order.

Subd. 3. Transcription, Certification and Filing. When the testimony is fully transcribed, the person before whom the deposition was taken shall certify on the deposition that the witness was duly sworn and that the deposition is a verbatim record of the testimony given by the witness. That person shall then secure the deposition, noting the title of the case and "Deposition of (here insert name of witness)" and shall promptly file it under seal with the court in which the case is pending. The deposition must not be unsealed or disclosed except by court order. Upon the request of the child's counsel or the prosecuting attorney, documents and other things produced during the examination of a witness, or copies thereof, shall be marked for identification and annexed as exhibits to the deposition, and may be inspected and copied by the child's counsel and the prosecuting attorney. The person taking the deposition shall mark the exhibits, and after giving opposing counsel an opportunity to inspect and copy them, return the exhibits to the person producing them. The exhibits may then be used in the same manner as if annexed to the deposition.

Subd. 4. Failure to Appear. Failure of the child to appear after notice is given will not prohibit the deposition from being taken.

Subd. 5. Expense of Depositions. If the child or the parent(s) of the child cannot afford the costs of depositions, these costs shall be paid at public expense in whole or in part, depending on the ability of the child or the parent(s) of the child to pay.

(Amended effective July 1, 2015.)

Comment--Rule 10

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.

RULE 11. PRETRIAL CONFERENCE

Rule 11.01 Timing

The court, in its discretion or upon motion of the child's counsel or the prosecuting attorney, may order a pretrial conference. Where there has been no pretrial conference, pretrial issues and motions shall be heard immediately before trial unless the court orders otherwise for good cause.

Rule 11.02 Evidentiary and Other Issues

At the pretrial conference, the court shall determine whether there are any constitutional or evidentiary issues and, if so, schedule an omnibus hearing pursuant to Rule 12. If there is no pretrial conference, constitutional or evidentiary issues shall be raised by written motion of the child's counsel or prosecuting attorney, and the court shall schedule an omnibus hearing. The written motion must specifically set forth the issues raised.

Comment--Rule 11

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

RULE 12. OMNIBUS HEARING

Rule 12.01 Scheduling of Omnibus Hearing

The court shall hold an omnibus hearing pursuant to Minnesota Rules of Criminal Procedure 11 any time before trial to determine issues raised pursuant to Rules 6, 10 or 11 upon its own motion or upon motion of the child's counsel or the prosecuting attorney.

Where new information, evidence, or issues arise during trial, the court may consider these issues at trial. Any issue not determined prior to trial shall be determined as part of the trial.

(Amended effective January 1, 2007.)

Rule 12.02 Scheduling of Trial

If a demand for speedy trial is made, the omnibus hearing shall not extend the time for trial unless the court finds good cause for continuance of the trial date.

Comment--Rule 12

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 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.

RULE 13. TRIALS

Rule 13.01 Purpose and Application

A trial is a hearing held to determine whether the child is guilty or not guilty of the offenses alleged in the charging document. This rule applies to all delinquency, and juvenile petty and juvenile traffic trials. Extended jurisdiction juvenile trials are governed by Rule 19.

Rule 13.02 Commencement of Trial

Subdivision 1. For a Child in Detention. A trial shall be commenced within thirty (30) days from the date of a demand for a speedy trial unless good cause is shown why the trial should not be commenced within that time.

Subd. 2. For a Child Not in Detention. A trial shall be commenced within sixty (60) days

from the date of a demand for a speedy trial unless good cause is shown why the trial should not be held within that time.

Subd. 3. Release. If the child is detained and the trial has not commenced within thirty (30) days of the demand and a continuance has not been granted, the child shall be released subject to such nonmonetary release conditions as may be required by the court and the trial shall commence within sixty (60) days of the original demand for a speedy trial.

Subd. 4. Dismissal. Unless there is good cause shown for the delay, the charging document shall be dismissed without prejudice if the trial has not commenced within the time set forth above and the court has not granted a continuance.

Subd. 5. Effect of Mistrial; Order For New Trial. Upon a declaration of a mistrial, or an order of the trial court or a reviewing court granting a new trial, a new trial before a new judge shall be commenced within fifteen (15) days unless good cause is shown and the court grants a continuance.

Rule 13.03 Trial

Subdivision 1. Initial Procedure. At the beginning of the trial, if the court has not previously determined the following information at a prior hearing, the court shall:

(A) verify the name, age and residence of the child who is the subject of the matter;
(B) determine whether all necessary persons are present and identify those present for the record; and
(C) determine whether notice requirements have been met and if not whether the affected persons waive notice.

Subd. 2. Order of Trial. The order of the trial shall be as follows:

(A) the prosecuting attorney may make an opening statement, confining the statement to the facts that it expects to prove;
(B) the child's counsel may make an opening statement, after the prosecutor's opening statement or may reserve the opening statement until immediately before offering the defense evidence. The statement shall be confined to a statement of the defense and the facts expected to be proved;
(C) the prosecuting attorney shall offer evidence in support of the charging document;
(D) the child's counsel may offer evidence in defense of the child;
(E) the child's counsel and the prosecuting attorney shall have the right to cross-examine witnesses;
(F) the prosecuting attorney may offer evidence in rebuttal of the defense evidence, and the child's counsel may then offer evidence in rebuttal of the prosecuting attorney rebuttal evidence. In the interests of justice the court may permit either the prosecuting attorney or the child's counsel to offer evidence upon the original case;
(G) at the conclusion of the evidence, the prosecuting attorney may make a closing argument; and
(H) the child's counsel may make a closing argument.

Subd. 3. Trial on Stipulated Facts. By agreement of the child and the prosecuting attorney, a determination of the child's guilt may be submitted to and tried by the court based on stipulated facts. Before proceeding in this manner, the child shall acknowledge and waive the rights to testify at trial, to have the prosecution witnesses testify in open court in the child's presence, to question those prosecution witnesses, and to require any favorable witnesses to testify for the child in court. The agreement and the waiver shall be in writing or orally on the record. Upon submission of the case on stipulated facts, the court shall proceed as in any other trial pursuant to Rule 13.

(Amended effective January 1, 2011.)

Rule 13.04 Evidence

The court shall admit only such evidence as would be admissible in a criminal trial.

Rule 13.05 Use of Depositions at Trial

Subdivision 1. Unavailability of Witness.

At a trial or hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence if:

(A) the witness is dead or unable to be present or to testify at the trial or hearing because of the witness's existing physical or mental illness, infirmity; or
(B) the person offering the deposition has been unable to procure the attendance of the witness by subpoena, order of the court, or other reasonable means; or
(C) there is a stipulation by counsel; or
(D) for any other reason accepted by the court.

A deposition may not be used if it appears that the absence of the witness was procured or caused by the person offering the deposition, unless part of the deposition has previously been offered by another party.

Subd. 2. Inconsistent Testimony. Any deposition may be used by the child's counsel or the prosecuting attorney for the purpose of contradicting or impeaching the testimony of the deponent when they appear as a witness.

Subd. 3. Substantive Evidence. A deposition may be used as substantive evidence so far as otherwise admissible under the rules of evidence, if the witness refuses to testify despite an order of the court to do so or if the witness gives testimony at the trial or hearing which is inconsistent with the deposition.

Rule 13.06 Standard of Proof

The allegations in the charging document must be proved beyond a reasonable doubt.

Rule 13.07 Joint Trials

Subdivision 1. Generally. When two or more children are jointly charged with any offense, they may be tried separately or jointly in the discretion of the court. Where the offense is a felony, the court shall consider the nature of the offense charged, the impact on the victim, the potential prejudice to each child, and the interests of justice before ordering a joint trial. A child in a joint trial shall be found guilty or not guilty in the same manner as a child tried separately.

Subd. 2. Severance Because of Improper Joinder. Where a child was improperly joined in a proceeding, the court shall order severance upon motion of the prosecuting attorney or the child's counsel. Improper joinder is not a ground for dismissal.

Subd. 3. Severance Because of Another Child's Out-of-Court Statement. Where one child's out-of-court statement refers to, but is not admissible against another child and those children may otherwise be tried jointly, the child against whom the statement is not admissible may move for severance. If the prosecuting attorney intends to offer the statement as evidence in its case in chief, the court shall require the prosecuting attorney to elect one of the following options:

(A) a joint trial at which the statement is not received in evidence;

(B) a joint trial at which the statement is received in evidence only after all references to the child making the motion have been deleted, if admission of the statement with the deletions will not prejudice that child; or

(C) severance.

Subd. 4. Severance During Trial. If the court determines severance is necessary to achieve a fair determination of the guilt or innocence of one or more of the children in a joint trial, the court shall order severance upon a finding of manifest necessity or with the consent of the child to be tried separately.

Rule 13.08 Joinder and Severance of Offenses

Subdivision 1. Joinder of Offenses. When the child's conduct constitutes more than one offense, each such offense may be charged in the same charging document in a separate count. The court, upon the prosecuting attorney's motion, may order joinder of offenses if the offenses could have been but were not joined in a single charging document. In extended jurisdiction juvenile cases, the child has the same right as an adult to sever offenses for separate trial on each offense.

Subd. 2. Severance of Offenses. On motion of the prosecuting attorney or the child's counsel, the court shall sever offenses or charges if:

(a) the offenses or charges are not related;

(b) before trial, the court determines severance is appropriate to promote a fair determination of the child's guilt or innocence of each offense or charge; or

(c) during trial, with the child's consent or upon a finding of manifest necessity, the court determines severance is necessary to achieve a fair determination of the child's guilt or innocence of each offense or charge. Misjoinder of offenses is not a ground for dismissal.

Rule 13.09 Findings

Within seven (7) days of the conclusion of the trial, the court shall make a general finding that the allegations in the charging document have or have not been proved beyond a reasonable doubt. The court shall dismiss the charging document if the allegations have not been proved. An order finding that the allegations of the charging document have been proved shall state the child's name and date of birth; and the date and county where the offense was committed. Within fifteen (15) days of the conclusion of the trial, the court shall in addition specifically find the essential facts that support a general finding that the allegations in the charging document have been proved beyond a reasonable doubt in writing. If an opinion or memorandum of decision is filed, it is sufficient if the findings of fact appear therein. If the court omits a finding on any issue of fact essential to sustain the general finding, it shall be deemed to have made a finding consistent with the general finding. Findings may be made on the record, but must be reduced to writing within the fifteen (15) days required herein.

(Amended effective January 1, 2011.)

Rule 13.10 Further Proceedings

If the court makes a finding that the allegations of the charging document have been proved, the court shall hold dispositional proceedings pursuant to Rule 15.

Comment--Rule 13

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 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.

RULE 14. CONTINUANCE FOR DISMISSAL

Rule 14.01 Agreements Permitted

Subdivision 1. Generally. After consideration of the victim's views and subject to the court's approval, the prosecuting attorney and the child's counsel may agree that the juvenile proceeding will be suspended for a specified period without a finding that the allegations of the charging document have been proved after which it will be dismissed as provided in Rule 14.07 on condition that the child not commit a delinquency or juvenile petty or juvenile traffic offense during the period of the continuance. The agreement shall be on the record or in writing and signed by the prosecuting attorney, the child, and the child's counsel, if any. The agreement shall contain a waiver by the child of the right to a speedy trial under Rule 13.02, subdivisions 1 and 2. The agreement may include stipulations concerning the existence of specified facts or the admissibility into evidence of specified testimony, evidence, or depositions if the suspension of prosecution is terminated and there is a trial on the allegations.

Subd. 2. Additional Conditions. Subject to the court's approval after consideration of the victim's views and upon a showing of substantial likelihood that the allegations could be proved and that the benefits to society from rehabilitation outweigh any harm to society from suspending the juvenile proceeding, the agreement may specify one or more of the following additional conditions to be observed by the child during the period of suspension:

(A) that the child not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the allegations are based;
(B) that the child participate in a supervised rehabilitation program, which may include treatment, counseling, training, and education;
(C) that the child make restitution in a specified manner for harm or loss caused by the offense alleged;
(D) that the child perform specified community service; and
(E) that the child pay court costs.

Subd. 3. Limitations on Agreements. The agreement may not specify a period of suspension longer than the juvenile court has jurisdiction over the child nor any condition other than that which could be imposed upon probation after a finding that the offenses alleged have been proved.

Rule 14.02 Court Approval; Filing of Agreement; Release

All agreements made under Rule 14.01 of this rule must be approved by the court on the record or in writing. Promptly after any written agreement is made and approved by the court, the prosecuting attorney shall file the agreement together with a statement that pursuant to the agreement the juvenile proceeding is suspended for a period specified in the statement. Upon court approval of the agreement, the child shall be released from any custody under Rule 5.

Rule 14.03 Modification of Agreement

Subject to Rules 14.01 and 14.02 and with the court's approval on the record or in writing, the parties, by mutual consent, may modify the terms of the agreement at any time before its termination.

Rule 14.04 Termination of Agreement; Resumption of Proceedings

Subdivision 1. Upon Notice of Child or Child's Counsel. The agreement is terminated and the juvenile proceeding may resume as if there had been no agreement if the child's counsel serves upon the prosecuting attorney and files a notice with the court that the agreement is terminated.

Subd. 2. Upon Order of Court. The court may order the agreement terminated and the juvenile proceeding resumed if, upon motion of the prosecuting attorney stating facts supporting the motion and upon hearing, the court finds that:

(A) the child or child's counsel misrepresented material facts affecting the agreement, if the motion is made within six months after the date of the agreement; or

(B) the child has committed a material violation of the agreement, if the motion is made not later than one month after the expiration of the period of suspension specified in the agreement.

Rule 14.05 Emergency Order

The court by warrant may direct any officer authorized by law to bring the child forthwith before the court for the hearing of the motion if the court finds from affidavit, written statements signed under penalty of perjury pursuant to Minnesota Statutes section 358.116, or testimony that:

(A) there is probable cause to believe the child committed a material violation of the agreement; and

(B) there is a substantial likelihood that the child otherwise will not attend the hearing.

In any case, the court may issue a summons instead of a warrant to secure the appearance of the child at the hearing.

(Amended effective July 1, 2015.)

Rule 14.06 Release Status upon Resumption of Delinquency, Juvenile Petty or Juvenile Traffic Proceedings

If the juvenile proceeding resumes under Rule 14.04, the child shall return to the release status in effect before the juvenile proceeding was suspended unless the court imposes additional or different conditions of release under Rule 5.

Rule 14.07 Termination of Agreement; Dismissal

If no motion by the prosecuting attorney to terminate the agreement is pending, the agreement is terminated and the charging document shall be dismissed 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 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.
(Amended effective July 1, 2015.)

Rule 14.08 Termination and Dismissal upon Showing of Rehabilitation

The court may order the agreement terminated, dismiss the juvenile proceedings, and bar further juvenile proceedings on the offense involved if, upon motion of a party stating facts supporting the motion and opportunity to be heard, the court finds that the child has committed no later offenses as specified in the agreement and appears to be rehabilitated.

Rule 14.09 Modification or Termination and Dismissal upon Child's Motion

If, upon motion of the child's counsel and hearing, the court finds that the prosecuting attorney obtained the child's consent to the agreement as a result of a material misrepresentation by a person covered by the prosecuting attorney's obligation under Rule 10.04, the court may:

(A) order appropriate modification of the terms resulting from the misrepresentation; or

(B) if the court determines that the interests of justice require, order the agreement terminated, dismiss the juvenile proceeding, and bar further juvenile proceedings on the offense involved.

Rule 14.10 Court Authority to Dismiss

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

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

(B) Unless waived by the child, the court must guarantee the child's right to a speedy trial under Rule 13.02, subdivisions 1 and 2;

(C) The continuance shall be on conditions provided in Rule 14.01 subdivisions 1 and 2, and shall be subject to limitations stated in Rule 14.01, subdivision 3;

(D) The terms of the continuance may be modified on the record or in writing, by the

court, with notice to all parties; and

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

Comment--Rule 14

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.

All agreements under this rule, including written agreements, must be approved by the court in writing or on the record.

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).

RULE 15. DELINQUENCY DISPOSITION

Rule 15.01 Generally

Subdivision 1. Findings on Charges. All references in this rule to findings that allegations in the charging document have been proved include findings pursuant to a plea of guilty by the child under Rule 8.04 and findings after trial pursuant to Rule 13.09.

Subd. 2. Application. This rule applies to delinquency dispositions. Rule 17 governs dispositions for juvenile petty offenses and juvenile traffic offenses. Rule 19 provides for sentence and disposition in extended jurisdiction juvenile cases.

Rule 15.02 Timing

Subdivision 1. Hearing. After the court makes a general finding that the allegations in the charging document have been proved beyond a reasonable doubt, the court may conduct a disposition hearing immediately or continue the matter for a disposition hearing at a later time as follows:

(A) for a child not held in detention, within forty-five (45) days from the finding that the allegations in the charging document have been proved beyond a reasonable doubt; or

(B) for a child held in detention, within fifteen (15) days from the finding that the allegations in the charging document have been proved beyond a reasonable doubt; or

(C) in cases involving a transfer of the file under subdivision 4, for a child not held in detention, as early as practicable but within ninety (90) days from the finding that the allegations in the charging document have been proved beyond a reasonable doubt.

Subd. 2. Order. The court shall enter a dispositional order pursuant to Rule15.05 within three (3) days of the disposition hearing. For good cause, the court may extend the time to enter a dispositional order to fifteen (15) days from the disposition hearing.

Subd. 3. Delay. For good cause, the court may extend the time period to conduct a disposition hearing for one additional period of thirty (30) days for a child not held in detention or fifteen (15) days for a child held in detention. Except in extraordinary circumstances, if the court fails to conduct a disposition hearing or enter a dispositional order for a child held in detention within the time limits prescribed by this rule, the child shall be released from detention. If a disposition hearing is not conducted or a dispositional order is not entered within the time limits prescribed by this rule, the court may dismiss the case.

Subd. 4. Transfer of File. If the matter is to be transferred to the child's county of residence for disposition, the court shall order a continuance and direct the court administrator to transfer the file to the juvenile court in the child's home county within five (5) days of the finding that the offense(s) charged have been proved. Venue transfers in juvenile court are governed by Minnesota Statutes, section 260B.105, except that case records and documents transferred electronically from one county to another within the court's case management system need not be certified. For convenience of the participants, the court which accepts a plea may determine the disposition for the court which will supervise the child's probation, if the transferring court has conferred with the receiving court and there is agreement regarding the disposition.

(Amended effective July 1, 2015.)

Rule 15.03 Predisposition Reports

Subdivision 1. Investigations and Evaluations. The court may order an investigation of the personal and family history and environment of the child, and medical, psychological or chemical dependency evaluations of the child:

(A) at any time after the charges in the charging document have been proved; or

(B) with the consent of the child, child's counsel, if any, and the parent(s), legal guardian or legal custodian of the child, before the charges in the charging document have been proved.

Subd. 2. Placement. With the consent of the child at any time or without consent of the child after the delinquency charges of a charging document pursuant to Minnesota Statutes, section 260B.007, subdivisions 6(a)(1) or (2) have been proved, the court may place the child with the consent of the Commissioner of Corrections in an institution maintained by the Commissioner of Corrections for the detention, diagnosis, custody and treatment of persons adjudicated to be delinquent in order that the investigation and evaluations may be conducted pursuant to Rule 15.03, subdivision 1.

Subd. 3. Advisory. The court shall advise the child, the child's counsel, the prosecuting attorney and the child's parent(s), legal guardian or legal custodian and their counsel present in court that a predisposition investigation is being ordered, the nature of the evaluations to be included and the date when the reports resulting from the investigation are to be filed with the court.

Subd. 4. Filing and Inspection of Reports. The person making the report shall file the report 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 report shall not be disclosed to the public except by court order.

(Amended effective July 1, 2015.)

Rule 15.04 Hearing

Subdivision 1. Procedure. Disposition hearings shall be separate from the hearing at which the charges are proved and may be held immediately following that hearing. Disposition hearings shall be conducted in a manner designed to facilitate opportunity for all participants to be heard. The child and the child's counsel, if any, shall appear at all disposition hearings. The child's parents and their counsel, if any, may also participate in the hearing. The child has the right of allocution at the disposition hearing, prior to any disposition being imposed.

Subd. 2. Evidence. The court may receive any information, except privileged communication, that is relevant to the disposition of the case including reliable hearsay and opinions. Anyone with the right to participate in the disposition hearing pursuant to Rule 2 may call witnesses, subject to cross-examination, regarding an appropriate disposition and may cross-examine any persons who have prepared a written report relating to the disposition.

Rule 15.05 Dispositional Order

Subdivision 1. Adjudication and Disposition. On each of the charges found by the court to be proved, the court shall either:

(A) adjudicate the child delinquent pursuant to Minnesota Statutes, section 260B.198, subdivision 1; or

(B) continue the case without adjudicating the child delinquent pursuant to Minnesota Statutes, section 260B.198, subdivision 7.

The adjudication or continuance without adjudication shall occur at the same time and in the same court order as the disposition.

Subd. 2. Considerations; Findings.

(A) The dispositional order made by the court shall contain written findings of fact to support the disposition ordered and shall set forth in writing the following information:

(1) why public safety and the best interests of the child are served by the disposition ordered;

(2) what alternative dispositions were recommended to the court and why such recommendations were not ordered; and

(3) if the disposition changes the place of custody of the child;

(a) the reasons why public safety and the best interest of the child are not served by preserving the child's present custody; and

(b) suitability of the placement, taking into account the program of the placement facility and assessment of the child's actual needs.

(B) When making a disposition, the court shall consider whether a particular disposition will serve established principles of dispositions, including but not limited to:

(1) Necessity. It is arbitrary and unjust to impose a disposition that is not necessary to restore law abiding conduct. Considerations bearing on need are:

(a) Public Safety. The risk to public safety, taking into account:

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

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

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

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

(b) Proportionality. The principle that the disposition be proportional, that is, the least restrictive action consistent with the child's circumstances.

(2) Best Interests. A disposition must serve the best interests of the child, but this does not supersede the requirement that the disposition be necessary. The promise of benefits in a disposition, or even the suggestion that a particular disposition is best for the child, does not permit a disposition that is not necessary.

(3) Out-of-Home Placement. Public policy mandates that the best interests of the child are normally served by parental custody. Where an out-of-home placement is being considered, the placement should be suitable to the child's needs. A placement that is not suited to the actual needs of the child cannot serve the child's best interests.

(4) Sanctions. Sanctions, such as post-adjudication placement in a secure facility, are appropriate where such measures are necessary to promote public safety and reduce juvenile delinquency, provided that the sanctions are fair and just, recognize the unique characteristics and needs of the child and give the child access to opportunities for personal and social growth. In determining whether to order secure placement, the court shall consider the necessity of protecting the public, protecting program residents and staff, and preventing juveniles with histories of absconding from leaving treatment programs. Other factors that may impact on what sanctions are necessary include: any prior adjudication for a felony offense against a person, prior failures to appear in court, or prior incidents of running away from home.

(5) Local Dispositional Criteria. The disposition should reflect the criteria used for determining delinquency dispositions in the local judicial district.

Subd. 3. Duration. A dispositional order transferring legal custody of the child pursuant to Minnesota Statutes, section 260B.198, subdivision 1(3) shall be for a specified length of time. The court may extend the duration of a placement but only by instituting a modification proceeding pursuant to Rule 15.08. Orders for probation shall be for an indeterminate length of time unless otherwise specified by the court and shall be reviewed by the court at least annually.

Subd. 4. Continuance without Adjudication.

(A) *Generally.* When it is in the best interests of the child and not inimical to public safety to do so, the court may continue the case without adjudicating the child. The court may not grant a continuance without adjudication where the child has been designated an extended jurisdiction juvenile.

(B) *Child Not in Detention*. If the child is not held in detention, the court may continue the case without adjudication for a period not to exceed one hundred eighty (180) days

from the date of disposition. The court may extend the continuance for an additional successive period not to exceed one hundred eighty (180) days with the consent of the prosecutor and only after the court has reviewed the case and entered its order for the additional continuance without a finding of delinquency.

(C) *Child in Detention*. If the child is held or is to be held in detention, the court may continue the case without adjudication and enter an order to hold the child in detention for a period not to exceed fifteen (15) days from the date of disposition. If the child is in detention, this continuance must be for the purpose of completing any consideration, or any investigation or examination ordered pursuant to Rule 15.03, subdivision 1. The court may extend this continuance and enter an order to hold the child in detention for an additional successive period not to exceed fifteen (15) days.

(D) *Dispositions During Continuance*. During any continuance without adjudication of delinquency, the court may enter a disposition order pursuant to Minnesota Statutes, section 260B.198, subdivision 1, except clause (4).

(E) *Adjudication after Continuance*. Adjudicating a child for an offense after initially granting a continuance without adjudication is a probation revocation and must be accomplished pursuant to Rule 15.07.

(F) *Termination of Jurisdiction.* A probation revocation proceeding to adjudicate the child on any allegation initially continued without adjudication must be commenced within the period prescribed by Rule 15.05, subdivisions 4 (B) or (C), or juvenile court jurisdiction over the charges terminates.

(Amended effective July 1, 2015.)

Rule 15.06 Informal Review

The court shall review all disposition orders, except commitments to the Commissioner of Corrections, at least every six (6) months.

If, upon review, the court finds there is good cause to believe a modification of the disposition is warranted under Rule 15.08, subdivision 8, the court may commence a modification proceeding pursuant to Rule 15.08.

Rule 15.07 Probation Violation

Subdivision 1. Commencement of Proceedings. Proceedings for revocation of probation may be commenced based upon a written report showing probable cause to believe the juvenile has violated any conditions of probation. Based upon the report, the court may issue a warrant as provided by Rule 4.03, or the court may schedule a review hearing and provide notice of the hearing as provided in Rule 25. If the juvenile fails to appear in response to a summons, the court may issue a warrant.

(A) *Contents of Probation Violation Report.* The probation violation report and supporting affidavits, or written statements signed under penalty of perjury pursuant to Minnesota Statutes section 358.116, if any, shall include:

(1) the name, date of birth and address of the child;

(2) the name and address of the child's parent(s), legal guardian, or legal custodian;

(3) the underlying offense or offenses and date(s) of offense for which violation of probation is alleged; and

(4) a description of the surrounding facts and circumstances upon which the request for revocation is based.

(B) *Notice.* The court shall give notice of the admit/deny hearing on the probation violation to all persons entitled to notice pursuant to Rule 25.

Subd. 2. Detention Hearing. Detention pending a probation violation hearing is governed by Rule 5.

Subd. 3. Admit/Deny Hearing. The child shall either admit or deny the allegations of the probation violation report at the admit/deny hearing.

(A) *Timing.* The admit/deny hearing shall be held:

(1) for a child in custody, at or before the detention hearing; or

(2) for a child not in custody, within a reasonable time of the filing of the motion.

(B) *Advisory.* Prior to the child admitting or denying the violation, the court shall advise the child of the following:

(1) that the child is entitled to counsel appointed at public expense at all stages of the proceedings;

(2) that, unless waived, a revocation hearing will be commenced to determine whether there is clear and convincing evidence that the child violated a dispositional order of the court and whether the court should change the existing dispositional order because of the violation;

(3) that before the revocation hearing, all evidence to be used against the child shall be disclosed to the child and the child shall be provided access to all official records pertinent to the proceedings;

(4) that at the hearing, both the prosecuting attorney and the child shall have the right to offer evidence, present arguments, subpoena witnesses, and call and cross-examine witnesses. Additionally, the child shall have the right at the hearing to present mitigating circumstances or other reasons why the violation, if proved, should not result in revocation; and

(5) that the child has the right of appeal from the determination of the court following the revocation hearing.

(C) *Denial.* If the child denies the allegations, the matter shall be set for a revocation hearing which shall be held in accordance with the provisions of Rule 15.07,

subdivision 4.

Subd. 4. Revocation Hearing.

(A) *Generally.* At the hearing, both the prosecuting attorney and the child shall have the right to offer evidence, present arguments, subpoena witnesses, and call and cross-examine witnesses, provided, however, that the child may be denied confrontation by the court when good cause is shown that a substantial risk of serious harm to others would exist if it were allowed. Additionally, the child shall have the right at the hearing to present mitigating circumstances or other reasons why the violation, if proved, should not result in revocation.

(B) *Timing.* The revocation hearing shall be held within seven (7) days after the child is taken into custody or, if the child is not in custody, within a reasonable time after the filing of the denial. If the child has allegedly committed a new offense, the court may postpone the revocation hearing pending disposition of the new offense whether or not the child is in custody.

(C) *Violation Not Proved.* If the court finds that a violation of the dispositional order has not been established by clear and convincing evidence, the revocation proceedings shall be dismissed, and the child shall continue under the dispositional order previously ordered by the court.

(D) *Violation Proved.* If the court finds by clear and convincing evidence, or the child admits violating the terms of the dispositional order, the court may proceed as follows:

(1) order a disposition pursuant to Minnesota Statutes, section 260B.198; or

(2) for a child who was previously granted a continuance without adjudication pursuant to Rule 15.05, subdivision 4, adjudicate the child and order a disposition pursuant to Minnesota Statutes, section 260B.198.

The dispositional order shall comply with Rule 15.05, subdivisions 2 and 3.

Rule 15.02 governs the timing of dispositional orders in probation violation matters.

(Amended effective July 1, 2015.)

Rule 15.08 Other Modifications

Subdivision 1. Generally. Rule 15.08 governs the procedure to be followed when any party, including the court, seeks modification of a disposition.

Subd. 2. Modification by Agreement. A disposition may be modified by agreement of all the parties, either in writing or on the record. All agreements to modify a disposition must be approved by the court, and the court may order the parties to appear at a hearing to examine the merits of the

modification and verify the voluntariness of the agreement on the record.

Subd. 3. Motion for Modification. All modification proceedings, shall be commenced by the filing of a motion or petition to modify the disposition. The motion for modification shall be in writing and shall be served and filed along with accompanying attachments, if any, in accordance with Rule 27. The motion or its attachments shall state the proposed modification and the facts and circumstances supporting such a modification.

Subd. 4. Written Request for Modification. If a child is not represented by counsel, the child or the child's parent may submit to the court a written request for modification and send a copy of the written request to the prosecuting attorney.

Subd. 5. Good Cause. Within ten (10) days of filing a motion or written request, the court shall determine from the written request or motion and accompanying attachments, if any, whether there is good cause to believe that a modification of the disposition is warranted under Rule 15.08, subdivision 8. If the court finds that good cause exists the court shall schedule a modification hearing within ten (10) days of such finding and issue a notice in lieu of summons or a summons in accordance with Rule 15.08, subdivision 6(A). If the court finds that good cause does not exist, the court shall issue an order denying the motion or written request for modification.

Subd. 6. Summons and Warrant.

(A) *Summons.* Notice in lieu of summons or a summons to the modification hearing shall be served upon the child, the child's counsel, the prosecuting attorney, the parent(s), legal guardian or legal custodian of the child, and any agency or department with legal custody of or supervisory responsibility over the child, pursuant to Rule 25. The summons shall be personally served upon the child.

(B) *Warrant.* The court may issue a warrant for immediate custody of a delinquent child or a child alleged to be delinquent if the court finds that there is probable cause to believe that the child has violated the terms of probation or a court order and:

(1) the child failed to appear after having been personally served with a summons or subpoena, or reasonable efforts to personally serve the child have failed, or there is a substantial likelihood that the child will fail to respond to a summons; or

(2) the child or others are in danger of imminent harm; or

(3) the child has left the custody of the detaining authority without permission of the court.

Subd. 7. Hearing.

(A) *Timing*. Except in extraordinary circumstances, the hearing shall be held within twenty (20) days of the date of filing of the modification request.

(B) *Hearing*. The modification hearing shall be conducted in accordance with Rule 15.04.

The moving party bears the burden of proving that modification is warranted under Rule 15.08, subdivision 8 by clear and convincing evidence.

Subd. 8. Grounds for Modification. The court may order modification of the disposition after a hearing upon a showing that there has been a substantial change of circumstances such that the original disposition is:

(A) insufficient to restore the child to lawful conduct; or

(B) inconsistent with the child's actual rehabilitative needs.

The modification order shall comply with Rule 15.05, subdivisions 2 and 3.

(Amended effective July 1, 2015.)

Comments--Rule 15

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).

Before placing a child in a secure treatment facility the court may conduct a subjective assessment to determine whether the child is a danger to self or others or would abscond from a nonsecure facility or if the child's health or welfare would be endangered if not placed in a secure facility; conduct a culturally appropriate psychological evaluation which includes a functional assessment of anger and abuse issues; and conduct an educational and physical assessment of the juvenile. See Minnesota Statutes, section 260B.198, subd. 4 (2002).

When the child has counsel, counsel has the right and the duty to appear at and participate in the disposition hearing.

As a matter of due process, the child has the absolute right to call and cross-examine the authors of any reports, object to the competency of the evidence contained in the reports, and otherwise respond to any adverse facts contained therein. See In re Welfare of N.W., 405

N.W.2d 512, 516-17 (Minn. Ct. App. 1987) (citing Scheibe v. Scheibe, 241 N.W.2d 100 (Minn. 1976); VanZee v. VanZee, 226 N.W.2d 865 (Minn. 1974); Stanford v. Stanford, 123 N.W.2d 187 (Minn. 1963)).

The child and other participants in the disposition hearing have the right to cross-examine the authors of any written report. However, Rules 15.03 and 15.04 do not mandate that the authors appear at the disposition hearing. Counsel may subpoena the authors of written reports for purposes of cross-examination.

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 charging document have been proved until after the court enters a dispositional order.

An order adjudicating a child delinquent prior to disposition is ineffective and not appealable. But the order becomes appealable as part of the disposition once a dispositional order is made. See In re Welfare of G.M., 533 N.W.2d 883, C9-95-812 (Minn. Ct. App. July 3, 1995).

A copy of the order adjudicating a child delinquent for committing felony-level criminal sexual conduct should be forwarded to the Bureau of Criminal Apprehension by the court in accordance with Minnesota Statutes, section 260B.171, subd. 2(a) (2002).

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.

b. The overriding purpose in every juvenile delinquency disposition, declared by statute, is to "promote the public safety and reduce juvenile delinquency by maintaining the integrity of the substantive law prohibiting certain behavior and by developing individual responsibility for lawful behavior." Minnesota Statutes, section 260B.001, subd. 2 (2002). This statute and another declare the means to be employed by the juvenile court to serve its public safety purpose. First, the purpose of the court "should be pursued through means that are fair and just, that recognize the unique characteristics and needs of children, and that give children access to opportunities for personal and social growth." Id. Second, the court is to employ dispositions that are "deemed necessary to the rehabilitation of the child." Minnesota Statutes, section 260B.198, subd. 1(2002). Each judicial district, after consultation with local county attorneys, public defenders, corrections personnel, victim advocates, and the public, is required to have written criteria for determining delinquency dispositions develop by September 1, 1995. See 1994 Minn. Laws ch. 576, section 59.

Where appropriate, the court should make every effort to use any available culturally-specific programs when making a disposition for a juvenile. The court should also be aware of racial disparities in dispositions among similarly situated juveniles, particularly for those offenses which have historically resulted in more severe sanctions for minorities. See Minnesota Supreme Court Task Force on Racial Bias in the Judicial System, Final Report p. 103-04, 108-09.

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).

The duration of a disposition that transfers custody of the child to the Commissioner of Corrections pursuant to Minnesota Statutes, section 260B.198, subd. 1(d) (2002) is determined by the Commissioner. See In re Welfare of M.D.A., 237 N.W.2d 827 (Minn. 1975).

"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 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 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. Del. 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. There was question as to whether probation officers could detain juveniles pending a probation violation hearing for 72 hours pursuant to Minn. Stat. §§ 244.195, subd. 2 (2004) and 401.025, subd. 1 (2004). Minn. R. Juv. Del. P. 15.07, subd. 2 was clarified to indicate that the maximum period for the detention of juveniles pending a probation violation hearing is 36 hours pursuant to Minn. R. Juv. Del. P. 5 and Minn. Stat. § 260B.176, subd. 2 (2004).

The three-step Austin analysis (see State v. Austin, 295 N.W.2d 246 (Minn. 1980)) is not required when revoking a juvenile's probation under Minn. R. Juv. Del. P. 15.07, subd. 4(D) "because the juvenile rules afford non-EJJ juvenile probationers better protection against the reflexive execution of a stayed disposition requiring confinement in a secure facility than Austin would afford." In re Welfare of R.V., 702 N.W.2d 294 (Minn. Ct. App. 2005).

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.

Rule 15.08 does not apply to probation revocations, the procedure for which is governed by Rule 15.07.

Minnesota Statutes, section 260B.154 (2002) addresses the court's authority to issue a warrant for immediate custody for the child. Minnesota Statutes, section 260B.175, subd. 1(c) addresses the authority of a peace officer or probation officer to take a child into custody for allegedly violating the terms of probationary supervision.

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.

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

RULE 16. POST-TRIAL MOTIONS

Rule 16.01 Post-trial Motions

Subdivision 1. Grounds. The court, on written motion of the child's counsel, may grant a new trial on any of the following grounds:

(A) if required in the interests of justice;
(B) irregularity in the proceedings of the court or in any court order or abuse of discretion by the court, if the child was deprived of a fair trial;
(C) misconduct of the prosecuting attorney;
(D) accident or surprise which could not have been prevented by ordinary prudence;
(E) material evidence, newly discovered, which with reasonable diligence could not have been found and produced at the trial;
(F) errors of law occurring at the trial and objected to at the time or, if no objection is required, assigned in the motion; or
(G) the finding that the allegations of the charging document are proved is not justified by the evidence or is contrary to law; or
(H) ineffective assistance of child's counsel.

Subd. 2. Basis of Motion. A motion for a new trial shall be made and heard on the files, exhibits and minutes of the court. Pertinent facts that would not be a part of the minutes may be shown by affidavit or written statement signed under penalty of perjury pursuant to Minnesota

Statutes, section 358.116, except as otherwise provided by these rules. A full or partial transcript of the court reporter's notes of the testimony taken at the trial or other verbatim recording thereof may be used on the hearing of the motion.

Subd. 3. Time for Motion.

(A) *Generally.* Notice of a motion for a new trial shall be served within fifteen (15) days after the court's specific findings are made pursuant to Rule 13.09. The motion shall be heard within thirty (30) days after the court's specific findings are made pursuant to Rule 13.09 unless the time for the hearing is extended by the court for good cause shown within the thirty (30) day period.

(B) *New Evidence.* Notice of a motion for a new trial based on new evidence shall be served and filed within fifteen (15) days of the filing of the court's order for adjudication and disposition. The motion shall be heard within fifteen (15) days of the filing of the notice of motion for new trial. Upon a showing that new evidence exists, the court shall order that a new trial be held within thirty (30) days, unless the court extends this time period for good cause shown within the thirty (30) days.

Subd. 4. Time for Serving Affidavits or Written Statements. When a motion for new trial is based on affidavits or written statements signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, they shall be served with the notice of motion. The prosecuting attorney shall have ten (10) days after such service in which to serve responsive documents. The period may be extended by the court upon an order extending the time for hearing under this rule. The court may permit reply documents.

(Amended effective July 1, 2015.)

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

The court, on motion of the child's counsel, shall vacate the finding that the allegations of the charging document are proved and dismiss the charging document if it fails to charge an offense or if the court was without jurisdiction of the offense charged. The motion shall be made within fifteen (15) days of the finding that the allegations of the charging document are proved or within such time as the court may fix during the fifteen (15) day period. If the motion is granted, the court shall make written findings specifying its reasons for vacating the finding that the allegations of the charging document are proved and dismissing the charging document.

Rule 16.03 Joinder of Motions

Any motion to vacate the finding that the allegations of the charging document are proved shall be joined with a motion for a new trial.

Rule 16.04 New Trial on Court's own Motion

The court, on its own motion, may order a new trial upon any of the grounds specified in Rule 16.01, subdivision 1 within fifteen (15) days after the finding that the allegations of the charging document are proved and with the consent of the child.

Rule 16.05 Order

Orders issued pursuant to this rule shall be in writing.

(Amended effective Jan. 1, 2008)

Comment--Rule 16

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.

In re Welfare of D.N. held that a juvenile must move for a new trial to raise an appealable issue on evidentiary rulings. In re Welfare of D.N., 523 N.W.2d 11, 13 (Minn. Ct. App. 1994), review denied (Minn. Nov. 29, 1994). It should be noted that D.N. was a child in need of protection or services and not a delinquent. The procedures for delinquent children are more closely aligned with the rules of adult criminal court.

RULE 17. JUVENILE PETTY OFFENDER AND JUVENILE TRAFFIC OFFENDER

Rule 17.01 Scope, Application and General Purpose

Rule 17 applies to children alleged to be juvenile petty offenders as defined by Minnesota Statutes, section 260B.007, subdivision 16 or juvenile traffic offenders as defined by Minnesota Statutes, section 260B.225. The purpose of Rule 17 is to provide a uniform and streamlined procedure for juvenile petty and juvenile traffic offenders which is sensitive to the fact that neither has the right to counsel at public expense, except as provided in Rule 3.02, subd. 5. Except as provided in this rule, the general rules of juvenile delinquency procedure apply to juvenile petty and juvenile traffic matters.

Subdivision 1. Juvenile Petty Offender. A juvenile petty offender is a child who has committed a juvenile petty offense as defined by Minnesota Statutes, section 260B.007, subdivision 16.

The prosecuting attorney may designate a child a juvenile petty offender despite the child's history of misdemeanor-level offenses.

Subd. 2. Juvenile Traffic Offender. A juvenile traffic offender is any child alleged to have committed a traffic offense except those children under the jurisdiction of adult court as provided in Minnesota Statutes, section 260B.225.

A traffic offense is any violation of a state or local traffic law, ordinance, or regulation, or a federal, state or local water traffic law.

Rule 17.02 Right to Counsel

Subdivision 1. Generally. In any proceeding in which a child is charged as a juvenile petty offender or a juvenile traffic offender, the child or the child's parent may retain private counsel, but the child does not have a right to counsel at public expense, except:

(A) when the child may be subject to out-of-home placement as provided in Minnesota Statutes, section 260B.235, subdivision 6; or

(B) as otherwise provided pursuant to Rule 3.02, subdivisions 3, 6 and 7.

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

Subd. 3. For Appeal. A child adjudicated a juvenile petty offender or juvenile traffic offender does not have the right to counsel at public expense for the purposes of appeal except at the discretion of the Office of the State Public Defender as set out in Rule 21.02 , subdivision 2.

Subd. 4. Parent, Legal Guardian or Legal Custodian as Counsel. A parent, legal guardian or legal custodian may not represent the child unless licensed as an attorney.

Rule 17.03 Warrants

The issuance of warrants under this Rule is governed by Rule 4.

Rule 17.04 The Charging Document and Notice of Arraignment

A child shall be charged as a juvenile petty offender or juvenile traffic offender pursuant to Rule 6 with proper notice given pursuant to Rule 25. The time for an arraignment shall be the same as that for a delinquency proceeding, and the child may resolve the case by paying a citation in lieu of appearing at arraignment as provided in Rule 6.

(Amended effective January 1, 2011.)

Rule 17.05 Arraignment

Subdivision 1. Generally. An arraignment is a hearing in which a child shall enter a plea of guilty or not guilty in the manner provided in Rule 17.06.

Subd. 2. Timing. Upon the filing of a charging document, the court administrator shall promptly fix a time for arraignment and send notices pursuant to Rule 25. The time for an arraignment shall be the same as that for a delinquency proceeding, that is:

(A) *Child in Custody.* The child in custody may be arraigned at a detention hearing and shall be arraigned no later than five (5) days after the detention hearing. The child has the right to have a copy of the charging document for three (3) days before being arraigned.

(B) *Child Not in Custody.* The child not in custody shall be arraigned no later than thirty (30) days after the filing of the charging document. The child has the right to have a copy of the charging document for three (3) days before being arraigned.

Subd. 3. Hearing Procedure. Children alleged to be juvenile petty offenders or juvenile traffic offenders may be arraigned as a group and shall be arraigned individually and confidentially upon request. At the start of the arraignment, the court shall inform the child(ren) of the following rights and possible dispositions:

(A) the right to remain silent;
(B) the right to counsel at any point throughout the proceedings, including the limited right to appointment of counsel at public expense;
(C) the right to plead not guilty and have a trial in which the child is presumed innocent unless and until the prosecuting attorney proves the allegations beyond a reasonable doubt;
(D) the right of the child to testify on the child's own behalf;
(E) the right to call witnesses using the court's subpoena powers;
(F) *For a Juvenile Petty Offender.*
  (1) the dispositions that may be imposed pursuant to Minnesota Statutes, section 260B.235, subdivisions 4, 5 and 6 if the child pleads guilty or, after a trial, the court finds that the allegations of the charging document have been proven beyond a reasonable doubt; and
  (2) if the offense is a second misdemeanor-level juvenile petty offense, the possibility that any same or similar offense will be charged as a misdemeanor in a delinquency petition;
(G) *For a Juvenile Traffic Offender.* The dispositions that may be imposed pursuant to Minnesota Statutes, section 260B.225, subdivision 9 if the child pleads guilty or, after a trial, the court finds that the allegations of the charging document have been proven beyond a reasonable doubt.

Subd. 4. Reading of Allegations of Charging Document. The court shall read the allegations of the charging document to the child and determine that the child understands them, and, if not, provide an explanation.

Subd. 5. Motions. The court shall hear and make findings on any motions regarding the sufficiency of the charging document, including its adequacy in stating probable cause of the charges made and the jurisdiction of the court, without requiring the child to plead guilty or not guilty to the charges in the charging document. A challenge of probable cause shall not delay the setting of trial proceedings in cases where the child has demanded a speedy trial.

Subd. 6. Response to Charging Document. After considering the wishes of the parties to proceed later or at once, the court may continue the arraignment without requiring the child to plead guilty or not guilty to the charges stated in the charging document.

(Amended effective July 1, 2015.)

Rule 17.06 Pleas

Subdivision 1. Plea of Guilty. Before the court accepts a plea of guilty, the court shall determine under the totality of the circumstances whether the child understands all applicable rights. The court shall on the record, or by written plea petition if the child is represented by counsel, determine

(A) whether the child understands

(1) the nature of the offense alleged;
(2) the right to the appointment of counsel if the child is subject to out-of-home placement as provided in Minnesota Statutes, section 260B.235, subdivision 6;
(3) the right to trial;
(4) the presumption of innocence until the prosecuting attorney proves the charges beyond a reasonable doubt;
(5) the right to remain silent;
(6) the right to testify on the child's own behalf;
(7) the right to confront witnesses against oneself;
(8) the right to subpoena witnesses;
(9) that the child's conduct constitutes the offense to which the child pled guilty;

(B) whether the child makes any claim of innocence; and

(C) whether the plea is made freely, under no threats or promises other than those the parties have disclosed to the court.

Subd. 2. Plea of Not Guilty. Upon a plea of not guilty, the matter shall be set for trial and the court shall advise the child of the discovery procedures as set forth in Rule 17.07.

Subd. 3. Withdrawal of Plea. The child may, on the record or by written motion filed with the court, request to withdraw a plea of guilty. The court may allow the child to withdraw a guilty plea:

(A) before disposition, for any just reason;
(B) at any time, if out-of-home placement is proposed based upon a plea or adjudication without the assistance of counsel; or
(C) after disposition, upon showing that withdrawal is necessary to correct a manifest injustice.

Subd. 4. Plea to a Lesser Offense or a Different Offense. With the consent of the prosecuting attorney and approval of the court, the child shall be permitted to enter:
(A) a plea of guilty to a lesser included offense or to an offense of a lesser degree; or
(B) a plea of guilty to a different offense than that alleged in the charging document.

A plea of guilty to a lesser included offense or to an offense of a lesser degree may be entered without an amendment of the charging document. If a plea to different offense is accepted, the charging document must be amended on the record or a new charging document muse be filed with the court.

Subd. 5. Acceptance or Nonacceptance of Plea of Guilty and Future Proceedings. The court shall make a finding within fifteen (15) days of the plea of guilty:
(A) that the plea has been accepted and the allegations in the charging document have been proved; or
(B) that the plea has not been accepted.

If the court accepts a plea of guilty and makes a finding that the allegations in the charging document have been proved, the court shall schedule further proceedings pursuant to Rule 17.09.

Rule 17.07 Discovery

At the court's discretion, discovery may be conducted in the manner provided for delinquency proceedings pursuant to Rule 10. Otherwise discovery shall proceed as follows: The prosecuting attorney shall, as soon as possible, provide the child with copies of statements and police reports. At least ten (10) days before trial, the parties shall exchange the names of witnesses they intend to have testify at trial as well as exhibit lists.

Rule 17.08 Pretrial and Omnibus Hearing

Upon request of either party, the court shall hold a pretrial and/or an omnibus hearing in the manner provided for delinquency proceedings pursuant to Rules 11 and 12.

Rule 17.09 Adjudication and Disposition

Subdivision 1. Predisposition Reports. Before finding that the allegations of the charging document have been proved, the court may order an investigation of the personal and family history and environment of the child and outpatient psychological or chemical dependency evaluations of the child. The information and recommendations contained in the predisposition report(s) shall be made known to the child, child's parent(s), legal guardian or legal custodian before the disposition hearing.

Subd. 2. Adjudication and Disposition. Within forty-five (45) days from the finding that the allegations of the charging document are proved, the court shall:

(A) *For a Juvenile Petty Offender.* Adjudicate the child a juvenile petty offender and order a disposition pursuant to Minnesota Statutes, section 260B.235, subdivisions 4, 5 and 6.

(B) *For a Juvenile Traffic Offender.* Adjudicate the child a juvenile traffic offender and order a disposition pursuant to Minnesota Statutes, section 260B.225, subdivision 9.

The order may be in writing or on the record. If the order is on the record, the child may request written findings, and the court shall make and file written findings within seven (7) days of the request. The court administrator shall serve the written findings as provided in Rule 28.

Subd. 3. Probation Revocation. Probation revocation proceedings shall be conducted in the same manner as delinquency probation violation proceedings pursuant to Rule 15.07 except for the following:

(A) *Warrant.* The court may only issue a warrant for immediate custody of a juvenile petty or juvenile traffic offender if the court finds that there is probable cause to believe that: the child failed to appear after having been personally served with a summons or subpoena, reasonable efforts to personally serve the child have failed, or there is a substantial likelihood that the child will fail to respond to a summons.

(B) *Advisory.* Prior to the child admitting or denying the allegations in the probation violation report, the court shall advise the child of the following:

(1) that, at all stages of the proceedings, the child has the right to be represented by counsel but does not have the right to counsel at public expense, unless the child is subject to out-of-home placement;

(2) that, unless waived, a revocation hearing will be commenced to determine whether there is clear and convincing evidence that the child violated a dispositional order of the court and whether the court should change the existing dispositional order because of the violation;

(3) that before the revocation hearing, all evidence to be used against the child shall be disclosed to the child and the child shall be provided access to all official records pertinent to the proceedings;

(4) that at the hearing, both the prosecuting attorney and the child shall have the right to offer evidence, present arguments, subpoena witnesses, and call and cross-examine witnesses, provided, however, that the child may be denied confrontation by the court when good cause is shown that a substantial risk of serious harm to others would exist if it were allowed. Additionally, the child shall have the right at the hearing to present mitigating circumstances or other reasons why the violation, if proved, should not result in revocation;

(5) that the child has the right of appeal from the determination of the court

following the revocation hearing.

(C) *Violation Proved.* If the court finds by clear and convincing evidence, or the child admits violating the terms of the dispositional order, the court may order a disposition pursuant to Minnesota Statutes, section 260B.235, subdivisions 4, 5 and 6 for a juvenile petty offender or a disposition pursuant to Minnesota Statutes, section 260B.225, subdivision 9 for a juvenile traffic offender.

Subd. 4. Other Modifications. Other modification proceedings shall be conducted in the same manner as delinquency modification proceedings pursuant to Rule 15.08 except that the court may not order a delinquency disposition. For a juvenile petty offender, the court may order a disposition pursuant to Minnesota Statutes, section 260B.235, subdivisions 4, 5 and 6 and for a juvenile traffic offender, the court may order a disposition pursuant to Minnesota Statutes, section 260B.225, subdivision 9. The modification order may be in writing or on the record. If the order is on the record, the child may request written findings, and the court shall make and file written findings within seven (7) days of the request.

(Amended effective Jan. 1, 2008)

Rule 17.10 Transfer to Adult Court of Juvenile Traffic Matter

Subdivision 1. On Motion of Court or Prosecuting Attorney. The court, after a hearing and on its own motion or on motion of the prosecuting attorney, may transfer a juvenile traffic offender case to adult court if makes a written order to transfer which finds that the welfare of the child or public safety would be better served under the laws relating to adult traffic matters.

Subd. 2. Method of Transfer. The court shall transfer the case by transferring all documents in the court file to adult court together with the order to transfer.

Subd. 3. Effect of Transfer. Upon transfer, jurisdiction of the juvenile court is deemed not to have attached and the adult court shall proceed with the case as if it had never been in juvenile court.

(Amended effective July 1, 2015.)

Rule 17.11 Child Incompetent to Proceed

If a child is believed to be incompetent to proceed, the court may proceed according to Rule 20, direct that civil commitment proceedings be initiated, direct that Child in Need of Protection or Services (CHIPS) proceedings be initiated or dismiss the case.

Comment--Rule 17

In 1995, the legislature expanded the definition of "juvenile petty offense." Pursuant to Minnesota Statutes, section 260.015, subd. 21 (Supp. 1995), a juvenile petty offense included the following:

(a) a juvenile alcohol offense;

(b) a juvenile controlled substance offense;

(c) a violation of section 609.685;

(d) a violation of a local ordinance, which by its terms prohibits conduct by a child under the age of 18 years which would be lawful conduct if committed by an adult;

(e) an offense, other than a violation of section 609.224, 609.324, 609.563, 609.576, or 617.23, that would be a misdemeanor if committed by an adult if:

(1) the child has not been found to be a juvenile petty offender on more than two prior occasions for a misdemeanor-level offense;

(2) the child has not previously been found to be delinquent for a misdemeanor, gross misdemeanor, or felony offense; or

(3) the county attorney designates the child on the petition as a juvenile petty offender, notwithstanding the child's prior record of misdemeanor-level juvenile petty offenses. Minnesota Statutes, section 260.015, subd. 21 (Supp. 1995).

This definition of juvenile petty offense applied to crimes committed on or after July 1, 1995. 1995 Minn. Laws Ch. 226, Art. 3, Sec. 65.

In 1996, the legislature again revised the definition of "juvenile petty offense." Pursuant to 1996 Minn. Laws Ch. 408, Art. 6, Sec. 1, a juvenile petty offense included:

(a) a juvenile alcohol offense;

(b) a juvenile controlled substance offense;

(c) a violation of section 609.685;

(d) a violation of local ordinance, which by its terms prohibits conduct by a child under the age of 18 years which would be lawful conduct if committed by an adult; and

(e) an offense that would be a misdemeanor if committed by an adult, except:

(1) a misdemeanor-level violation of section 588.20, 609.224, 609.2242, 609.324, 609.563, 609.576, 609.66, or 617.23;

(2) a major traffic offense or an adult court traffic offense, as described in section 260.193;

(3) a misdemeanor-level offense committed by a child whom the juvenile court previously has found to have committed a misdemeanor, gross misdemeanor, or felony offense; or

(4) a misdemeanor-level offense committed by a child whom the juvenile court has found to have committed a misdemeanor-level juvenile petty offense on two or more prior occasions, unless the county attorney designates the child on the petition as a juvenile petty offender notwithstanding this prior record. As used in this clause, "misdemeanor-level juvenile petty offense" included a misdemeanor-level offense that would have been a juvenile petty offense if it had been committed on or after July 1, 1995. 1996 Minn. Laws Ch. 408, Art. 6, Sec. 1.

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).

The legislature reorganized the law relating to juvenile delinquency and child protection in 1999. 1999 Minn. Laws Ch. 139. This recodification is found in Minnesota

Statutes, sections 260B.001-260B.446 for juvenile delinquency.

Minnesota Statutes, section 260B.225, subd. 2 (2002) provides that the prosecutor may allege the child is delinquent based upon a traffic offense but the court must find as a further fact that the child is delinquent within the meaning and purpose of the laws relating to juvenile court. Such matter shall be initiated and shall proceed in the same manner as any other delinquency.

At the arraignment, the court may inform each child of his or her rights and the possible consequences by reading and having each child sign a sheet outlining those rights. A suggested form for this rights sheet is included in the appendix of forms, following these rules.

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.

The right to appeal is set forth in Minnesota Statutes, section 260B.415, subd. 1 (2002).

RULE 18. CERTIFICATION OF DELINQUENCY MATTERS

Rule 18.01 Application

Subdivision 1. Generally. This rule is applicable when the prosecutor moves for certification and a child is alleged to have committed, after becoming fourteen (14) years of age, an offense that would be a felony if committed by an adult.

Subd. 2. First Degree Murder Acquisition. The district court has original and exclusive jurisdiction in criminal proceedings concerning a child alleged to have committed murder in the first degree after becoming sixteen (16) years of age. Upon the filing of a complaint or indictment charging a sixteen (16) or seventeen (17) year old child in adult court proceedings with the offense of first degree murder, juvenile court jurisdiction terminates for all proceedings arising out of the same behavioral incident.

(Amended effective July 1, 2015.)

Rule 18.02 Initiation of Certification Proceedings of Delinquency Matters

Subdivision 1. Generally. Proceedings to certify delinquency matters pursuant to Minnesota Statutes, section 260B.125 may be initiated upon motion of the prosecuting attorney after a delinquency petition has been filed. The motion may be made at the first appearance of the child pursuant to Rules 5 or 7, or within ten (10) days of the first appearance or before jeopardy attaches, whichever of the latter two occurs first. The motion shall be in writing and comply with the provisions of Rule 27, and shall include a statement of grounds supporting the certification.

Subd. 2. First Degree Murder Accusation. When the delinquency petition that is the basis for the motion for certification alleges that a child under age sixteen (16) committed the offense of murder in the first degree, the prosecuting attorney shall present the case to the grand jury for consideration of an indictment under Minnesota Statutes, chapter 628 within fourteen (14) days after the petition is filed.

Rule 18.03 Notice of Certification

Notice of the initial appearance under Rule 18.05, subdivision 2 together with a copy of the motion for certification and a copy of the delinquency petition shall be served pursuant to Rule 25.

Rule 18.04 Certification Study

Subdivision 1. Order. The court on its own motion or on the motion of the child's counsel or the prosecuting attorney, may order social, psychiatric, or psychological studies concerning the child who is the subject of the certification proceeding.

Subd. 2. Content of Reports. If the person preparing the report includes a recommendation on the court's actions: (a) the report shall address each of the public safety considerations of Rule 18.06, subdivision 3; and (b) the report shall address all options of the trial court under Rule 18.07, namely: (i) certification; (ii) retention of jurisdiction for extended jurisdiction juvenile proceedings; and (iii) retention of juvenile court jurisdiction in non-presumptive certification cases.

Subd. 3. Costs. Preparation costs and court appearance expenses for person(s) appointed by the court to conduct studies shall be paid at public expense.

Subd. 4. Filing and Access to Reports. The person(s) making a study shall file a written report with the court and provide copies to the prosecuting attorney and the child's counsel four (4) days, excluding Saturdays, Sundays, and legal holidays, prior to the time scheduled for the hearing. The report shall not be disclosed to the public except by court order.

Subd. 5. Admissibility. Any matters disclosed by the child to the examiner during the course of the study may not be used as evidence or the source of evidence against the child in any subsequent trial.

(Amended effective July 1, 2015.)

Rule 18.05 Hearing

Subdivision 1. In General.

(A) *Limited Public Access.* The court shall exclude the general public from certification hearings and shall admit only those persons who, in the discretion of the court, have a direct interest in the case or the work of the court, including victims. The court shall open the hearings to the public in certification proceedings where the child is alleged

to have committed an offense or has been proven to have committed an offense that would be a felony if committed by an adult and the child was at least sixteen (16) years of age at the time of the offense, except that the court may exclude the public from portions of a certification hearing to consider psychological material or other evidence that would not be accessible to the public in an adult proceeding.

(B) *Timing.* The certification hearing shall be held within thirty (30) days of the filing of the certification motion. Only if good cause is shown by the prosecuting attorney or the child may the court extend the time for a hearing for another sixty (60) days. Unless the child waives the right to the scheduling of the hearing within specified time limits, if the hearing is not commenced within thirty (30) days, or within the extended period ordered pursuant to this subdivision, the child, except in extraordinary circumstances, shall be released from custody subject to such nonmonetary release conditions as may be required by the court under Rule 5.

(C) *Waiver.* The child may waive the right to a certification hearing provided that the child does so knowingly, voluntarily, and intelligently on the record after being fully and effectively informed of the right to a certification hearing by counsel. In determining whether the child has knowingly, voluntarily, and intelligently waived this right the court shall look at the totality of the circumstances. These circumstances include but are not limited to: the presence of the child's parent(s), legal guardian, legal custodian or guardian ad litem appointed in the delinquency proceeding; and the child's age, maturity, intelligence, education, experience, and ability to comprehend the proceedings and consequences.

(D) *Discovery.* The child and prosecuting attorney are entitled to discovery pursuant to Rule 10.

Subd. 2. Initial Appearance in Certification Proceeding. At the initial appearance following the motion for certification the court shall:

(A) verify the name, age and residence of the child who is the subject of the matter;
(B) determine whether all necessary persons are present and identify those present for the record;
(C) appoint counsel, if not previously appointed;
(D) determine whether notice requirements have been met and if not whether the affected persons waive notice;
(E) schedule further hearings including: a probable cause hearing, unless waived; the certification hearing under Rule 18.05, subdivision 4; and a pre-hearing conference if requested; and
(F) order studies pursuant to Rule 18.04, if appropriate.

Subd. 3. Probable Cause Determination.

(A) *Timing.* Unless waived by the child or based upon an indictment, a hearing and court determination on the issue of probable cause shall be completed within fourteen (14)

days of filing the certification motion. The court may, on the record, extend this time for good cause.

(B) *Standard.* A showing of probable cause to believe the child committed the offense alleged by the delinquency petition shall be made pursuant to Minnesota Rules of Criminal Procedure 11.

(C) *Presumption.* Upon a finding of probable cause, the court shall determine whether the presumption for certification under Rule 18.06, subdivision 1 applies.

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

Subd. 4. Conduct and Procedure for Certification Hearing.

(A) *Hearing Rights.* The child's counsel and the prosecuting attorney shall have the right to:
(1) present evidence;
(2) present witnesses;

(3) cross-examine witnesses; and
(4) present arguments for or against certification.

(B) *Evidence.* All evidence considered by the court on the certification question shall be made a part of the court record. The court may receive any information, except privileged communication, that is relevant to the certification issue, including reliable hearsay and opinions.

(C) *Order of Hearing; Presumptive Certification.*

(1) The child's counsel may make an opening statement, confining the statement to the facts that the child expects to prove.

(2) The prosecuting attorney may make an opening statement, or may make it immediately before offering evidence. The statement shall be confined to the facts expected to be proved.

(3) The child's counsel shall offer evidence against certification.

(4) The prosecuting attorney may offer evidence in support of the motion for certification.

(5) The child's counsel may offer evidence in rebuttal of the evidence for certification, and the prosecuting attorney may then offer evidence in rebuttal

of the child's rebuttal evidence. In the interests of justice, the court may permit either party to offer additional evidence.

(6) At the conclusion of the evidence, the prosecuting attorney may make a closing argument.

(7) The child's counsel may make a closing argument.

(D) *Order of Hearing; Non-presumptive Certification.*

(1) The prosecuting attorney may make an opening statement, confining the statement to the facts that the prosecutor expects to prove.

(2) The child's counsel may make an opening statement, or may make it immediately before offering evidence. The statement shall be confined to a statement of the defense and the facts expected to be proved.

(3) The prosecuting attorney shall offer evidence in support of certification, or alternatively, designation as an extended jurisdiction juvenile proceeding.

(4) The child's counsel may offer evidence in defense of the child.

(5) The prosecuting attorney may offer evidence in rebuttal of the defense evidence, and the child's counsel may then offer evidence in rebuttal of the prosecuting attorney's rebuttal evidence. In the interests of justice the court may permit either party to offer additional evidence.

(6) At the conclusion of the evidence, the prosecuting attorney may make a closing argument.

(7) The child's counsel may make a closing argument.

(E) *Burdens of Proof.* In a presumptive certification hearing under Rule 18.06, subdivision 1, the child shall have the burden to prove by clear and convincing evidence that retaining the proceeding in juvenile court serves public safety. In non-presumptive certification hearings under Rule 18.06, subdivision 2, the prosecuting attorney shall have the burden to prove by clear and convincing evidence that retaining the proceeding in juvenile court does not serve public safety.

(Amended effective January 1, 2007.)

Rule 18.06 Certification Determination

Subdivision 1. Presumption of Certification. Pursuant to Minnesota Statutes, section 260B.125, subdivision 3, it is presumed that a child will be certified for action under the laws and

court procedures controlling adult criminal violations if:

(A) the child was sixteen (16) or seventeen (17) years old at the time of the offense;

(B) the delinquency petition alleges that the child committed an offense that would result in a presumptive commitment to prison under the sentencing guidelines and applicable statutes, or a felony offense in which the child allegedly used a firearm; and

(C) probable cause has been determined pursuant to Rule 18.05, subdivision 3.

The presumption of certification is overcome if the child demonstrates by clear and convincing evidence that retaining the proceedings in juvenile court serves public safety.

Subd. 2. Non-presumptive Certification. If there is no presumption of certification as defined by subdivision 1, the court may order certification only if the prosecuting attorney has demonstrated by clear and convincing evidence that retaining the proceeding in juvenile court does not serve public safety.

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

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

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

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

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

(E) the adequacy of the punishment or programming available in the juvenile justice system;

(F) the dispositional options available for the child.

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

Subd. 4. Prior Certification. The court shall order certification in any felony case if the prosecutor shows that the child was previously prosecuted and convicted in adult proceedings that were certified pursuant to Minnesota Statutes, section 260B.125, subdivision 5.

Subd. 5. Extended Juvenile Court Jurisdiction.

(A) *Presumptive Certification*. If the juvenile court does not order certification in a presumptive certification case, the court shall designate the proceeding an extended jurisdiction juvenile prosecution.

(B) *Non-presumptive Certification.* If the court does not order certification in a non-presumptive certification case, the court may consider designating the proceeding an extended jurisdiction juvenile prosecution. Designation as an extended jurisdiction juvenile prosecution may only occur if the prosecuting attorney has shown by clear and convincing evidence that the designation would serve public safety, taking into account the factors specified in Rule 18.06, subdivision 3. Absent this showing the case shall proceed as a delinquency proceeding in juvenile court.

(Amended effective September 1, 2005.)

Rule 18.07 Order

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

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

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

(C) findings of fact as to:
  (1) the child's date of birth; and
  (2) the date of the alleged offense; and

(D) if the child is currently being detained, that:
  (1) the child be detained in an adult detention facility; and
  (2) the child be brought before the appropriate court (as determined pursuant to Rule 18.08) without unnecessary delay, and in any event, not more than thirty-six (36) hours after filing of the certification order, exclusive of the day of filing, Sundays, or legal holidays, or as soon thereafter as a judge is available.

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

(A) *Certification of the Alleged Offense for Prosecution under the Criminal Laws.* If the court orders a certification for adult prosecution, the order shall state:
  (1) that adult court prosecution is to occur on the alleged offense(s) specified in the certification order;
  (2) a finding of probable cause in accordance with Rule 18.05, subdivision 3 unless the accusation was presented by means of an indictment;
  (3) findings of fact as to:
    (a) the child's date of birth;
    (b) the date of the alleged offense;
    (c) why the court upheld the presumption of certification under Rule 18.06, subdivision 1 or, if the presumption of certification does not apply but

the court orders certification, why public safety, as defined in Rule 18.06, subdivision 3, is not served by retaining the proceeding in juvenile court; and

(4) if the child is currently being detained, that (a) the child be detained in an adult detention facility, and (b) the child be brought before the appropriate court (as determined pursuant to Rule 18.08) without unnecessary delay, and in any event, not more than thirty-six (36) hours after filing of the certification order, exclusive of the day of filing, Sundays or legal holidays or as soon thereafter as a judge is available.

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

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

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

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

(C) *Retention of Jurisdiction by Juvenile Court.* If the court does not order certification or extended jurisdiction juvenile prosecution in a non-presumptive certification case, the order shall state why certification or extended jurisdiction juvenile prosecution was not ordered with specific reference to why retention of the matter in juvenile court serves public safety, considering the factors listed in Rule 18.06, subdivision 3. Further proceedings shall be held pursuant to Rule 7.

Subd. 3. Delay. For good cause, the court may extend the time period to file its order for an additional fifteen (15) days. If the order is not filed within fifteen (15) days, or within the extended period ordered by the court pursuant to this subdivision, the child, except in extraordinary circumstances, shall be released from custody subject to such nonmonetary release conditions as may be required by the court under Rule 5.

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

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

(Amended effective January 1, 2007.)

Rule 18.08 Termination of Jurisdiction upon Certification

Subdivision 1. Child Not in Detention. Once the court enters an order certifying a proceeding, the jurisdiction of the juvenile court terminates immediately over a child who is not then detained in custody. All subsequent steps in the case are governed by the Minnesota Rules of Criminal Procedure.

Subd. 2. Child in Detention. If the child is detained at the time certification is ordered:

(A) If the alleged offense was committed in the same county where certification is ordered, juvenile court jurisdiction terminates immediately and the prosecuting attorney shall file an appropriate adult criminal complaint at or before the time of the next appearance of the child that is stated in the certification order pursuant to Rule 18.07, subdivision 2(A)(4).

(B) If the alleged offense was committed in a county other than where certification is ordered, juvenile court jurisdiction terminates in five (5) days or before if the prosecuting attorney files a complaint as provided under Minnesota Rules of Criminal Procedure 2. If juvenile court jurisdiction has terminated under this subsection before an appearance of a detained child following issuance of an order certifying the case, the appearance shall constitute a first appearance in criminal proceedings as provided in the Minnesota Rules of Criminal Procedure. If juvenile court jurisdiction has not terminated by the time a detained juvenile first appears following issuance of an order certifying, the juvenile court shall determine conditions of release in accordance with the provisions of Minnesota Rules of Criminal Procedure 5.01(d) and 6.02; for these purposes, the juvenile court petition shall serve in lieu of a criminal complaint as the charging instrument.

Subd. 3. Stay. Notwithstanding the preceding provisions of subdivision 1 and 2, certification and the termination of juvenile court jurisdiction may be stayed as provided in Rule 21.03, subdivision 3. A motion for stay of the certification order pending appeal shall first be heard by the juvenile court.

(Amended effective January 1, 2011.)

Rule 18.09 Withdrawal of Waiver of Certification Hearing

Subdivision 1. General Procedure. A child may bring a motion to withdraw the waiver of certification hearing and stipulation to certification order:

(A) within fifteen (15) days of the filing of the order for certification, upon showing that it is fair and just to do so; or

(B) at any time prior to trial, upon showing that withdrawal is necessary to correct a

manifest injustice.

The motion shall be made in the juvenile court that entered the certification order. A motion shall also be filed for a stay of proceedings in the adult court to which the case was certified.

Subd. 2. Basis for Motion. The motion shall state with particularity one of the following bases for granting withdrawal of waiver:

(A) the waiver was not knowingly, voluntarily, and intelligently made;
(B) the child alleges ineffective assistance of counsel; or
(C) withdrawal of waiver is appropriate in the interests of justice.

Subd. 3. Timing and Effect of Hearing. A hearing shall be held within fifteen (15) days of the filing of the motion. Following the hearing, if the court grants the motion to withdraw the waiver of certification hearing: 1) the court shall vacate the order for certification, and proceedings will resume in juvenile court pursuant to Rule 18; and 2) the court shall review the order for custody or conditions of release. If the court denies the motion to withdraw the waiver for certification hearing, the certification order shall remain in effect, and proceedings will resume in adult court.

Comment--Rule 18

Pursuant to Minnesota Statutes, section 260B.125, subd. 6 (2002), on a proper motion, the court may hold a certification hearing for an adult charged with a juvenile offense if:

(1) the adult was alleged to have committed an offense before his or her 18th birthday; and

(2) a petition was timely filed under Minnesota Statutes, sections 260B.141 (2002) and 628.26 (2002). The court may not certify the matter if the adult demonstrates that the delay was purposefully caused by the state in order to gain an unfair advantage. Minnesota Statutes, section 260B.125, subd. 6 (2002); see also In re Welfare of A.N.J., 521 N.W.2d 889, 891 (Minn. Ct. App. 1994). Juvenile court retains jurisdiction to hear a certification motion filed after the child's 19th birthday provided a delinquency petition has been timely filed and the delay was not the result of an improper state purpose.

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, which as of January 1, 2010 is now Minn. R. Crim. P. 11.09. 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. 11.04 and 18.05, 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. 11.04. 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).

When a child waives probable cause solely for the purpose of certification, that waiver does not preclude the child from litigating probable cause in a subsequent prosecution on the underlying offense.

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).

Under Minnesota Statutes, sections 260B.101, subd. 2, 260B.007, subd. 6(b), and 260B.125, subd. 10 (2002), the accusation of first degree murder by a 16 or 17 year old child takes the case out of the delinquency jurisdiction of the juvenile court. If this accusation is first made by complaint, and is followed by an indictment that does not accuse the child of first degree murder but of some other crime, the proceedings come within the exclusive

jurisdiction of the juvenile court, but subject to action of the juvenile court on any motion for certification of the proceedings to adult court. In these circumstances, the juvenile court would deal with an accusation by indictment in the same fashion as proceedings might otherwise occur on a juvenile court petition. Once adult court proceedings begin on an indictment for first degree murder, regardless of the ultimate conviction, the proceedings remain within adult court jurisdiction. Indictments may be received by any district court judge including one sitting in juvenile court.

Under Minn. R. Crim. P. 17.01, first degree murder cases are prosecuted by an indictment, but the proceedings can begin by complaint. State v. Behl, 564 N.W.2d 560 (Minn. 1997). As a result, the prosecuting attorney can initiate a first degree murder accusation in adult court proceedings.

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.

RULE 19. EXTENDED JURISDICTION JUVENILE PROCEEDINGS AND PROSECUTION

Rule 19.01 Initiation of Extended Jurisdiction Juvenile Proceedings and Prosecution

Subdivision 1. Authority. Extended jurisdiction juvenile prosecutions are initiated pursuant to Minnesota Statutes, sections 260B.125 and 260B.130, Rule 18.06, subdivisions 5(A) and (B), and Rule 19.

Subd. 2. Definitions.

(A) **"Extended jurisdiction juvenile"** is a child who has been given a stayed adult criminal sentence, a disposition under Minnesota Statutes, section 260B.198 and for whom jurisdiction of the juvenile court may continue until the child's twenty-first (21st) birthday.

(B) **"Extended jurisdiction juvenile proceeding"** includes the process to determine whether a child should be prosecuted as an extended jurisdiction juvenile. Extended jurisdiction juvenile proceedings may be initiated pursuant to Rule 19.01, subdivisions 3 and 4.

(C) **"Extended jurisdiction juvenile prosecution"** includes the trial, disposition, and subsequent proceedings after the determination that a child should be prosecuted as an extended jurisdiction juvenile. Extended jurisdiction juvenile prosecutions may be initiated pursuant to Rule 19.06.

Subd. 3. Designation by Prosecuting Attorney. The court shall commence an extended jurisdiction juvenile proceeding when a delinquency petition filed pursuant to Rule 6:

(A) alleges a felony offense committed after the child's sixteenth (16th) birthday and the offense would, if committed by an adult, result in a presumptive commitment to prison under the sentencing guidelines and applicable statutes, or a felony offense in which the child allegedly used a firearm; and

(B) the prosecuting attorney designates on the petition that the case should be an extended jurisdiction juvenile prosecution.

This designation may be made at the time the petition is filed, and may be withdrawn by the prosecuting attorney any time before jeopardy attaches.

Subd. 4. Motion by Prosecuting Attorney. The prosecuting attorney may make a written motion pursuant to this Rule to have the court commence an extended jurisdiction juvenile proceeding when a delinquency petition has been filed pursuant to Rule 6 alleging a felony offense committed after the child's fourteenth (14th) birthday. The motion may be made at the first appearance on the delinquency petition, or within ten (10) days after the first appearance pursuant to Rules 5 and 7 or before jeopardy attaches, whichever of the latter two occurs first.

(Amended effective January 1, 2007.)

Rule 19.02 Notice of the Extended Jurisdiction Juvenile Proceeding

A notice of the initial appearance under Rule 19.04, subdivision 2, together with a copy of the petition and designation, or a copy of the motion and petition, shall be served pursuant to Rule 25.

Rule 19.03 Extended Jurisdiction Juvenile Study

Subdivision 1. Order. The court on its own motion or on the motion of the child's counsel or the prosecuting attorney, may order social, psychiatric, or psychological studies concerning the child who is the subject of the extended jurisdiction juvenile proceeding.

Subd. 2. Content of Reports. If study reports include a recommendation on the court's actions, the report shall address each of the public safety considerations of Rule 19.05.

Subd. 3. Costs. Preparation costs and court appearance expenses for the person(s) appointed by the court to conduct studies shall be paid at public expense.

Subd. 4. Filing and Access to Reports. The person(s) making a study shall file a written report with the court and provide copies to the prosecuting attorney and the child's counsel four (4) days, excluding Saturdays, Sundays, and legal holidays, days prior to the time scheduled for the hearing. The report shall not be disclosed to the public except by court order.

Subd. 5. Admissibility of Study. Any matters disclosed by the child to the examiner during the course of the study may not be used as evidence or the source of evidence against the child in any subsequent trial.

(Amended effective July 1, 2015.)

Rule 19.04 Hearings on Extended Jurisdiction Juvenile Proceedings

Subdivision 1. In General.

(A) *Limited Public Access.* The court shall exclude the general public from extended jurisdiction juvenile proceedings and shall admit only those persons who, in the discretion of the court, have a direct interest in the case or the work of the court including victims. The court shall open the hearings to the public in extended jurisdiction juvenile proceedings where the child is alleged to have committed an offense or has been proven to have committed an offense that would be a felony if committed by an adult and the child was at least sixteen (16) years of age at the time of the offense, except that the court may exclude the public from portions of an extended jurisdiction juvenile proceedings hearing to consider psychological material or other evidence that would not be accessible to the public in an adult proceeding.

(B) *Timing*. The contested hearing to determine whether the matter will be an extended jurisdiction juvenile prosecution shall be held within thirty (30) days of the filing of the extended jurisdiction juvenile proceeding motion.

Only if good cause is shown by the prosecuting attorney or the child may the court extend the time for the contested hearing for up to an additional sixty (60) days.

(C) *Waiver.* The child may waive the right to an extended jurisdiction juvenile proceeding hearing provided that the child does so knowingly, voluntarily, and intelligently on the record after being fully and effectively informed of all rights by counsel. In determining whether the child has knowingly, voluntarily, and intelligently waived this right the court shall look at the totality of the circumstances. These circumstances include but are not limited to: the presence of the child's parent(s), legal guardian, legal custodian or guardian ad litem appointed in the delinquency proceeding, the child's age, maturity, intelligence, education, experience, and ability to comprehend the proceedings and consequences.

(D) *Discovery.* The child and prosecuting attorney are entitled to discovery pursuant to Rule 10.

Subd. 2. Initial Appearance and Probable Cause Determination.

(A) *Timing.* Unless waived by the child, or based upon an indictment, an initial appearance and court determination on the issue of probable cause shall be completed within fourteen (14) days of the filing of the petition designating an extended jurisdictional juvenile proceeding or the filing of the extended jurisdictional juvenile proceedings motion. The court may, on the record, extend this time for good cause.

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

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

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

(3) appoint counsel if not previously appointed;

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

(5) schedule further hearings including: a probable cause hearing, unless waived; the contested hearing required by Rule 19.04, subdivision 3; and a pre-hearing conference if requested; and

(6) order studies pursuant to Rule 19.03, if appropriate.

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

(D) *Designation Probable Cause.* If the prosecuting attorney has designated the proceeding an extended jurisdiction juvenile proceeding pursuant to Rule 19.01, subdivision 3 and the court finds that:

(1) probable cause exists for an offense that, if committed by an adult, would be a presumptive commitment to prison under the Sentencing Guidelines and applicable statutes or alleges a felony offense in which the child allegedly used a firearm; and

(2) the child was at least sixteen (16) years old at the time of the offense, the court shall order that the matter proceed as an extended jurisdiction juvenile prosecution pursuant to Rule 19.09.

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

Subd. 3. Conduct and Procedure for Extended Jurisdiction Juvenile Proceeding Contested Hearing.

(A) *Hearing Rights.* The child's counsel and the prosecuting attorney shall have the right to:
(1) present evidence;
(2) present witnesses;
(3) cross-examine witnesses; and
(4) present arguments for or against extended jurisdiction juvenile prosecution.

(B) *Evidence.* All evidence considered by the court on the extended juvenile jurisdiction question shall be made a part of the court record. The court may receive any information, except privileged communication, that is relevant to the issue of extended jurisdiction juvenile prosecution, including reliable hearsay and opinions.

(C) *Order of Hearing.*

(1) The prosecuting attorney may make an opening statement, confining the statement to the facts expected to be proved.
(2) The child's counsel may make an opening statement, or may make it immediately before offering evidence. The statement shall be confined to a statement of the defense and the facts expected to be proved.
(3) The prosecuting attorney shall offer evidence in support of extended jurisdiction juvenile prosecution.
(4) The child's counsel may offer evidence on behalf of the child.
(5) The prosecuting attorney may offer evidence in rebuttal of the defense evidence, and the child's counsel may then offer evidence in response to the prosecuting attorney's rebuttal evidence. In the interests of justice the court may permit either party to offer additional evidence.
(6) At the conclusion of the evidence, the prosecuting attorney may make a closing argument.
(7) The child's counsel may make a closing argument.

(D) *Burdens of Proof.* The prosecuting attorney shall prove by clear and convincing evidence that the case meets the criteria for extended jurisdiction juvenile prosecution, pursuant to Rule 19.05.

(Amended effective July 1, 2015.)

Rule 19.05 Public Safety Determination

In determining whether public safety would be served, the court shall take into account the following factors:

(A) the seriousness of the alleged offense in terms of community protection, including the existence of any aggravating factors recognized by the Minnesota Sentencing

Guidelines, the use of a firearm, and the impact on the victim;

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

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

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

(E) the adequacy of the punishment or programming available in the juvenile justice system; and

(F) the dispositional options available for the child.

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

Rule 19.06 Extended Jurisdiction Juvenile Prosecution Determination

Subdivision 1. Extended Jurisdiction Juvenile Prosecution Required. The court shall designate the proceeding an extended jurisdiction juvenile prosecution:

(A) following a motion for certification in a presumptive certification case pursuant to Minnesota Statutes, section 260B.125, subdivision 3:

(1) when the court finds, after a contested hearing pursuant to Rule 18.05, that the child has shown by clear and convincing evidence that retaining the proceeding in juvenile court serves public safety pursuant to Rule 18.06, subdivision 3; or

(2) when the parties agree that extended jurisdiction juvenile prosecution is appropriate; or

(B) following designation by the prosecuting attorney and findings by the court pursuant to Rule 19.04, subdivision 2(D).

Subd. 2. Extended Jurisdiction Juvenile Prosecution Discretionary. The court may designate the proceeding an extended jurisdiction juvenile prosecution:

(A) following a motion for certification in a non-presumptive certification case:

(1) when the court finds, after a contested certification hearing, that the prosecutor has not demonstrated by clear and convincing evidence that retaining the proceeding in juvenile court does not serve public safety pursuant to Rule 18.06, subdivision 3, and the court determines that extended jurisdiction juvenile prosecution is appropriate; or

(2) when the parties agree that extended jurisdiction juvenile prosecution is appropriate and the child waives the right to a contested hearing; or

(B) following a motion for extended jurisdiction juvenile proceeding:

(1) when the court finds, after a contested extended jurisdiction juvenile hearing conducted pursuant to Rule 19.04, that designating the proceeding an extended jurisdiction juvenile prosecution serves public safety pursuant to Rule 19.05; or

(2) when the parties agree that extended jurisdiction juvenile prosecution is appropriate and the child waives the right to a contested hearing.

Rule 19.07 Order

Subdivision 1. Decision, Timing, and Content of Order Following Waiver of Extended Jurisdiction Juvenile Hearing and Stipulation to Extended Jurisdiction Juvenile Order. When a child waives the right to a contested hearing and stipulates to entry of an order that the child is subject to an extended jurisdiction juvenile prosecution, the court shall, within five (5) days of that hearing, enter a written order stating:

(A) that the extended jurisdiction juvenile prosecution shall occur for the offense(s) alleged in the delinquency petition filed pursuant to Rule 6.03;

(B) a finding of probable cause in accordance with Rule 19.04, subdivision 2(C), unless the accusation was presented by means of an indictment; and

(D) findings of fact as to:

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

(2) the date of the alleged offense(s).

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

(A) If the court orders that the proceeding be an extended jurisdiction juvenile prosecution, the order shall state:

(1) that extended jurisdiction juvenile prosecution shall occur for the offense(s) alleged in the delinquency petition filed pursuant to Rule 6.03;

(2) a finding of probable cause in accordance with Rule 19.04, subdivision 2(C), unless the accusation was presented by means of an indictment; and

(3) findings of fact as to:

(a) the child's date of birth;

(b) the date of the alleged offense(s); and

(c) why the court found that designating the proceeding as an extended jurisdiction juvenile prosecution serves public safety pursuant to Rule 19.05.

(B) If the court does not order that the proceeding be an extended jurisdiction juvenile prosecution, the court order shall state:

(1) that the case shall proceed as a delinquency proceeding in juvenile court;

(2) a finding of probable cause in accordance with Rule 19.04, subdivision 2(C), unless the accusation was presented by means of an indictment; and

(3) findings of fact as to:

(a) the child's date of birth;

(b) the date of the alleged offense(s);

(c) why the court found that retaining the proceeding in juvenile court serves public safety pursuant to Rule 19.05.

Subd. 3. Delay. For good cause, the court may extend the time period to file its order for an additional fifteen (15) days. If the order is not filed within fifteen (15) days, or within the extended period ordered by the court pursuant to this subdivision, the child, except in extraordinary circumstances, shall be released from custody subject to such nonmonetary release conditions as may be required by the court under Rule 5.

Subd. 4. Venue Transfer. When the court deems it appropriate, taking into account the best interest of the child or of society, or the convenient administration of the proceedings, the court may transfer venue of the case to the juvenile court of the county of the child's residence. With the consent of the receiving court, the court may also transfer the case to the juvenile court of the county where the child is found or the county where the alleged offense occurred. The transfer shall be processed in the manner provided by Minnesota Statutes, section 260B.105, except that case records and documents transferred electronically from one county to another within the court's case management system need not be certified. The receiving court thereafter has venue for purposes of all proceedings under Rules 19.10 (disposition and sentencing upon conviction in extended jurisdiction juvenile proceedings) and 19.11 (revocation of stay of adult criminal sentence).

Subd. 5. Final Order. Any order issued pursuant to this rule is a final order.

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

(Amended effective July 1, 2015.)

Rule 19.08 Withdrawal of Waiver of Extended Jurisdiction Juvenile Hearing.

Subdivision 1. General Procedure. A child may bring a motion to withdraw the waiver of extended jurisdiction juvenile hearing and stipulation to extended jurisdiction juvenile prosecution order:

(A) within fifteen (15) days of the filing of the order, upon showing that it is fair and just to do so; or

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

The motion shall be made in the juvenile court that entered the extended jurisdiction juvenile prosecution order.

Subd. 2. Basis for Motion. The motion shall state with particularity one of the following bases for granting withdrawal of the waiver:

(A) the waiver was not knowingly, voluntarily, or intelligently made;

(B) the child alleges ineffective assistance of counsel; or

(D) withdrawal is appropriate in the interests of justice.

Subd. 3. Timing and Effect of Hearing. A hearing shall be held within fifteen (15) days of the filing of the motion. Following the hearing, if the court grants the motion to withdraw the waiver of extended jurisdiction juvenile hearing, the court shall vacate the order for extended jurisdiction juvenile prosecution, and proceedings will resume pursuant to Rule 19.04. If the court denies the motion to withdraw the waiver for extended jurisdiction juvenile hearing, the order for extended jurisdiction juvenile prosecution shall remain in effect, and proceedings will resume pursuant to Rule 19.09.

Rule 19.09 Extended Jurisdiction Juvenile Prosecution and Procedure for Seeking an Aggravated Adult Criminal Sentence

Subdivision 1. General Procedure and Timing. Minnesota Statutes, chapters 260 and 260B and these Rules apply to extended jurisdiction juvenile prosecutions. However, every child who is the subject of an extended jurisdiction juvenile prosecution is entitled to trial by jury on the underlying offense pursuant to Minnesota Rules of Criminal Procedure 26. The court shall schedule a hearing for the child to enter a plea to the charges. If the child pleads not guilty, the court shall schedule an omnibus hearing prior to the trial and shall also schedule the trial. The trial shall be scheduled pursuant to Rule 13.02, except:

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

(B) In cases where the child is in detention, if the extended jurisdiction juvenile hearing is commenced within thirty (30) days of the prosecution motion for designation as an extended jurisdiction juvenile prosecution, the trial shall be scheduled within sixty (60) days of the court's order designating the child an extended jurisdiction juvenile, unless good cause is shown why the trial should not be held within that time. If the hearing on the motion to designate the child as an extended jurisdiction juvenile is commenced more than thirty (30) days from the filing of the motion, the trial shall be commenced within thirty (30) days of entry of the court's order designating the child an extended jurisdiction juvenile.

Subd. 2. Notice and Procedure for Seeking an Aggravated Adult Criminal Sentence.

(A) *Notice.* Within seven (7) days after filing of a designation of the proceeding as an extended jurisdiction juvenile prosecution by the court or prosecutor, or at such later time if permitted by the court upon good cause shown and upon such conditions as will not unfairly prejudice the child, the prosecutor shall file and serve on the child's attorney written notice of intent to seek an aggravated adult criminal sentence as defined in Minnesota Rules of Criminal Procedure 1.04(d). The notice shall include the grounds or statutes relied upon and a summary statement of the factual basis supporting the aggravated adult criminal sentence.

(B) *Procedure.* If the prosecutor has filed and served notice under this rule of intent to seek an aggravated adult criminal sentence, a hearing shall be held to determine whether the law and proffered evidence support an aggravated adult criminal

sentence and, if so, whether the issues will be presented to the jury in a unitary or bifurcated trial. The hearing shall be held prior to trial.

In deciding whether to bifurcate the trial, the court shall consider whether the evidence in support of an aggravated adult criminal sentence is otherwise admissible in the guilt phase of the trial and whether unfair prejudice would result to the child in a unitary trial. A bifurcated trial shall be ordered where evidence in support of an aggravated adult criminal sentence includes evidence that is inadmissible during the guilt phase of the trial or would result in unfair prejudice to the child. If the court orders a unitary trial the court may still order separate final arguments on the issues of guilt and the aggravated adult criminal sentence.

Except as modified by these rules, procedures relating to an aggravated adult criminal sentence are governed by the Minnesota Rules of Criminal Procedure.

(Amended effective July 1, 20157.)

Rule 19.10 Disposition

Subdivision 1. Procedure. Upon a guilty plea or conviction, the court shall:

(A) order one or more dispositions under Minnesota Statutes, section 260B.198; and

(B) impose an adult criminal sentence under Minnesota Law, except that the court shall stay execution of that sentence on the conditions that the child not violate the provisions of the disposition ordered in subdivision 1(A) above or commit a new offense.

Subd. 2. Length of Stayed Sentence. Unless the stayed sentence is executed after a revocation hearing pursuant to Rule 19.11, jurisdiction of the juvenile court shall terminate on the child's twenty-first (21st) birthday or at the end of the maximum probationary term, whichever occurs first. The court may terminate jurisdiction earlier pursuant to Rule 15.08.

Subd. 3. Limitation on Certain Extended Jurisdiction Juvenile Dispositions. If an extended jurisdiction juvenile prosecution, initiated by designation by the prosecuting attorney, results in a guilty plea or a conviction for an offense other than a presumptive commitment to prison under the Minnesota Sentencing Guidelines or a felony committed using a firearm, the court shall only impose one or more dispositions under Minnesota Statutes, section 260B.198. But if the child has pled guilty and consents, even if the plea or the conviction is for an offense other than a presumptive commitment under the guidelines, the court may also impose a stayed adult criminal sentence under Rule 19.10, subdivision 1.

Subd. 4. Venue. If the child's county of residence is not the same county where the offense occurred, venue of the case may be transferred as provided by Minnesota Statutes, section 260B.105, except that case records and documents transferred electronically from one county to another within

the court's case management system need not be certified. The conditions under which the execution of any adult sentence are stayed shall be determined by the juvenile court having jurisdiction to impose and supervise any juvenile court disposition. The stayed adult sentence may be pronounced by the judge who presided over the trial or who accepted a plea of guilty. If venue for the juvenile disposition is being transferred to the child's county of residence, the transferring court shall prepare and provide to the receiving court, a copy of the juvenile's file, including any plea and sentencing transcript, if any, and the adult stayed sentence form or order.

Subd. 5. Record of Proceedings.

(A) A verbatim record shall be made of all plea and sentencing proceedings.

(B) A record of the adult stayed sentence shall also be recorded in a sentencing form or order that, at a minimum, contains:

(1) the child's name;

(2) case number;

(3) for each count:

(a) if the child pled guilty to or was found guilty of the offense:

(i) the offense date;

(ii) a citation to the offense statute;

(iii) the precise terms of the adult criminal sentence, and that execution has been stayed;

(iv) the level of sentence; and

(v) the amount of time spent in custody, if any; or

(b) if the child did not plead guilty to or was not found guilty of the offense, that the child was acquitted or the count was dismissed; and

(4) the signature of the sentencing judge.

(Amended effective July 1, 2015.)

Rule 19.11 Revocation

Subdivision 1. Commencement of Proceedings.

(A) *Issuance of Revocation Warrant or Summons.* Proceedings for the revocation of a stayed sentence shall be commenced by the issuance of a warrant or a summons by the court. The warrant or summons shall be based upon a written report showing probable cause to believe that the probationer has violated any of the provisions of the disposition order or committed a new offense. The written report shall include a description of the surrounding facts and circumstances upon which the request for revocation is based. The court may issue a summons instead of a warrant whenever it is satisfied that a warrant is unnecessary to secure the appearance of the probationer. The court may issue a warrant for immediate custody of the probationer if the court finds that there is probable cause to believe that the probationer has violated the terms of probation or a court order, and:

(1) the probationer failed to appear after having been personally served with a summons or subpoena, or reasonable efforts to personally serve the

probationer have failed, or there is a substantial likelihood that the probationer will fail to respond to a summons; or

(2) the probationer or others are in danger of imminent harm; or

(3) the probationer has left the custody of the detaining authority without permission of the court.

(B) *Contents of Warrant and Summons.* Both the warrant and summons shall contain the name of the probationer, a description of the stayed sentence sought to be revoked, and the signature of the issuing judge or judicial officer of the district court. The amount of any bail or other conditions of release may be set by the issuing judge or judicial officer and stated on the warrant. The warrant shall direct that the probationer be brought promptly before the court. The warrant shall direct that the probationer be brought before a judge or judicial officer without unnecessary delay, and in any event not later than thirty-six (36) hours after the arrest exclusive of the day of arrest. The summons shall summon the probationer to appear at a stated time and place to respond to the revocation charges.

(C) *Place of Detention.* If the probationer is under eighteen (18) years of age and is to be detained prior to the revocation hearing, the probationer may only be detained in a juvenile facility. If the probationer is eighteen (18) years of age or older and is to be detained, the probationer may be detained in an adult facility.

(D) *Execution or Service of Warrant or Summons; Certification.* Execution, service, and certification of the warrant or summons shall be as provided in Minnesota Rules of Criminal Procedure 3.03.

Subd. 2. First Appearance.

(A) *Advice to Probationer.* A probationer who initially appears before the court pursuant to a warrant or summons concerning an alleged probation violation, shall be advised of the nature of the violation charged. The probationer shall also be given a copy of the written report upon which the warrant or summons was based if the probationer has not previously received such report. The judge, judicial officer, or other duly authorized personnel shall further advise the probationer substantially as follows:

(1) the probationer is entitled to counsel at all stages of the proceedings, and if financially unable to afford counsel, one will be appointed for the probationer and, if counsel is waived, standby counsel will be appointed;

(2) unless waived, a revocation hearing will be held to determine whether there is clear and convincing evidence that the probationer violated any provisions of the disposition order or committed a new offense and that the stayed sentence should therefore be revoked;

(3) before the revocation hearing, all evidence to be used against the probationer shall be disclosed to the probationer and the probationer shall be provided access to all official records pertinent to the proceedings;

(4) at the hearing, both the prosecuting attorney and the probationer shall have the

right to offer evidence, present arguments, subpoena witnesses, and call and cross examine witnesses, provided, however, the probationer may be denied confrontation by the court when good cause is shown that a substantial risk of serious harm to others would exist if it were allowed. Additionally, the probationer shall have the right at the revocation hearing to present mitigating circumstances or other reasons why the violation, if proved, should not result in revocation; and

(5) the probationer has the right of appeal from the determination of the court following the revocation hearing.

(B) *Appointment of Counsel.* If the probationer is financially unable to afford counsel, one will be appointed for the probationer and, if counsel is waived, standby counsel shall be appointed.

(C) *Conditions of Release.* The probationer may be released pending appearance at the revocation hearing. In deciding whether and upon what conditions to release the probationer, the court shall take into account the conditions of release and the factors determining the conditions of release as provided by Rule 5 and Minnesota Rules of Criminal Procedure 6.02, subdivisions 1 and 2. The probationer has the burden of establishing that he or she will not flee or will not be a danger to any other person or the community.

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

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

Subd. 3. Revocation Hearing.

(A) *Hearing Procedures.* The hearing shall be held in accordance with the provisions of Rule 19.11, subdivisions 2(A)(1), (2), (3), and (4).

(B) *Finding of No Violation of Terms and Conditions of Disposition.* If the court finds that a violation of the terms and conditions of the disposition order was not established by clear and convincing evidence, the revocation proceedings shall be dismissed, and the probationer's stayed sentence shall be continued under conditions ordered by the court.

(C) *Finding of Violation of Terms and Conditions of Disposition.*

(1) If the court finds upon clear and convincing evidence that any provisions of the disposition order were violated, or if the probationer admits the violation, the court may revoke the probationer's extended jurisdiction juvenile status. Upon revocation of extended jurisdiction juvenile status, the court shall treat the offender as an adult and may order any of the adult sanctions authorized by Minnesota Statutes, section 609.14, subdivision 3.

(2) To execute the stayed prison sentence after revocation of extended jurisdiction juvenile status, the court must make written findings that:
(a) one or more conditions of probation were violated;
(b) the violation was intentional or inexcusable; and
(c) the need for confinement outweighs the policies favoring probation.

(3) If the extended jurisdiction juvenile conviction was for an offense with a presumptive prison sentence or the probationer used a firearm, and the court has made findings pursuant to clause (2), the court shall order execution of the sentence unless the court makes written findings indicating the mitigating factors that justify continuing the stay.

(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 adult sentence pursuant to Minnesota Statutes, section 609.14, subdivision 3.

(E) *Record of Findings.* A verbatim record shall be made of the proceedings at the revocation hearing and in any contested hearing the court shall make written findings of fact on all disputed issues including a summary of the evidence relied upon and a statement of the court's reasons for its determination.

(F) *Appeal.* The probationer or the prosecuting attorney may appeal from the court's decision according to the procedure provided for appeal in Rule 21.

(Amended effective July 1, 2015.)

Comment--Rule 19

The determination of "presumptive prison" under the Minnesota Sentencing Guidelines should be analyzed pursuant to those guidelines.

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, which as of January 1, 2010, is now Minn. R. Crim. P. 11.09. 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. Del. 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.

Previously, the last sentence to Rule 19.04, subd. 2(A) stated, "If witnesses are to be called, the court may continue the hearing." This statement was deleted because the committee felt it was redundant in light of the previous sentence, which allows the court to extend the time of the hearing for good cause.

Much of the content of Minn. R. Juv. Del. P. 19.04, subd. 3 is modeled after Minn. R. Crim. P 11.04 and 18.05, 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. 11.04. 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).

When a juvenile waives probable cause solely for the purpose of an extended jurisdiction juvenile proceeding, that waiver does not preclude the child from litigating probable cause in a subsequent prosecution on the underlying offense.

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.

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 (2002), and eliminate the need for non-offense related dangerousness. See In re Welfare of D.M.D., 607 N.W.2d 432 (Minn. 2000).

Rule 19.09(B) was amended to clarify that a continuance beyond the timelines prescribed by Rule may be necessary in limited circumstances. For example, a reasonable delay may be appropriate to facilitate necessary scientific testing. The Committee adopted a "good cause" standard for use in determining whether to grant a continuance. "Good cause" is defined in case law; however, the Committee intends a strict application of the standard. Time is of the essence in an extended jurisdiction juvenile prosecution. Juvenile dispositional

options and treatment opportunities may be lost if the trial is unnecessarily delayed. The court should consider the unique nature of extended jurisdiction juvenile when deciding whether to grant a continuance for good cause.

Following the presentation of evidence by the prosecuting attorney the child may move the court for directed relief on the grounds that the burden of proof has not been met.

Under Minnesota Statutes, section 260B.163, subd. 7 (2002) the custodial parent or guardian of the child alleged or found to be delinquent or prosecuted as an extended jurisdiction juvenile, must accompany the child at each hearing held during the delinquency or extended juvenile jurisdiction proceedings, 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 260.154 (2002).

Pursuant to Minnesota Statutes, section 260B.245 (2002), if a child is convicted as an extended jurisdiction juvenile, the child will be assigned points for the purpose of computing a criminal history score pursuant to the Minnesota Sentencing Guidelines, as if the child were an adult.

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. This is in contrast to the decision to revoke probation in delinquency cases, for which consideration of the Austin factors is not required. In re Welfare of R.V., 702 N.W.2d 294 (Minn. Ct. App. 2005).

The court's holding 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.

The decision in In Re Welfare of T.C.J., 689 N.W.2d 787 (Minn. Ct. App. 2004), that Minnesota Statutes, section 260B.130, subd. 4(b) violates the Equal Protection Clause, raises an issue regarding the application of Minn. R. Juv. Del. P. 19.10, subd. 3, which was modeled after the statute.

A disposition form developed by the Minnesota Sentencing Guidelines Commission shall be completed by the court in addition to the findings of facts, conclusions of law and order.

A sentencing worksheet developed by the Minnesota Sentencing Guidelines Commission shall be completed by the probation department pursuant to Minn. R. Crim. P. 27, and Minnesota Statutes, sections 609.115 and 631.20 (2002). The court shall send a copy of this worksheet to the Minnesota Sentencing Guidelines Commission pursuant to Minn. R. Crim. P. 27.03, subd. 4(C).

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

RULE 20. CHILD INCOMPETENT TO PROCEED AND DEFENSE OF MENTAL ILLNESS OR COGNITIVE IMPAIRMENT

Rule 20.01 Proceeding when Child is Believed to be Incompetent

Subdivision 1. Incompetency to Proceed Defined. A child is incompetent and shall not be permitted to enter a plea, be tried, or receive a disposition for any offense when the child lacks sufficient ability to:

(A) consult with a reasonable degree of rational understanding with the child's counsel; or

(B) understand the proceedings or participate in the defense due to mental illness or cognitive impairment.

Subd. 2. Counsel. Any child subject to competency proceedings shall be represented by counsel.

Subd. 3. Proceedings. The prosecuting attorney, the child's counsel or the court shall bring a motion to determine the competency of the child if there is reason to doubt the competency of the child during the pending proceedings.

The motion shall set forth the facts constituting the basis for the motion but the child's counsel shall not divulge communications in violation of the attorney-client privilege. The bringing of the motion by the child's counsel does not waive the attorney-client privilege. Any such motion may be brought over the objection of the child. Upon such motion, the court shall suspend the proceedings and shall proceed as follows:

(A) *Felony or Gross Misdemeanor*. If the offense is a felony or gross misdemeanor, the court shall determine whether there is sufficient probable cause to believe the child committed the offense charged before proceeding pursuant to this rule. If there is sufficient showing of probable cause, the court shall proceed according to this rule. If the court finds insufficient probable cause to believe the child committed the offense charged, the charging document against the child shall be dismissed.

(B) *Other Matters*. If the offense is a misdemeanor, juvenile petty matter or juvenile traffic offense, the court having trial jurisdiction shall proceed according to this rule, or dismiss the case in the interests of justice.

(C) *Examination*. If there is probable cause, the court shall proceed as follows. The Court shall suspend the proceedings and appoint at least one examiner as defined in the Minnesota Commitment Act, Minnesota Statutes, Ch. 253B to examine the child and report to the court on the child's mental condition.

The court may not order confinement for the examination if the child is otherwise entitled to release and if the examination can be done adequately on an outpatient basis. The court may require the completion of an outpatient examination as a condition of release.

The court may order confinement for an inpatient examination for a specified period not to exceed sixty (60) days if the examination cannot be adequately done on an outpatient basis or if the child is not entitled to be released.

The court shall permit examination of the child or observation of such examination by a qualified psychiatrist, clinical psychologist or qualified physician retained and requested by the child's counsel or prosecuting attorney.

The court shall further direct the mental-health professionals to notify promptly the prosecuting attorney, the child's counsel, and the court if such mental-health professionals conclude, upon examination, that the child presents an imminent risk of serious danger to another person, is imminently suicidal, or otherwise needs emergency intervention.

(D) *Report of Examination*. Within sixty (60) days from the order for examination, or earlier if directed by the court, the examiner shall file a written report with the court, and the court shall provide a copy to the prosecuting attorney and the child's counsel. The report contents shall not be otherwise disclosed until the hearing on the child's competency. The report shall include:

(1) A diagnosis of the mental condition of the child;

(2) If the child is mentally ill or cognitively impaired, an opinion as to:

  (a) whether the child can understand the proceedings and participate in the defense;

  (b) whether the child presents an imminent risk of serious danger to another person, is imminently suicidal, or otherwise needs emergency intervention;

  (c) whether the child requires any treatment to attain competency and if so, the appropriate treatment alternatives by order of choice, the extent to which the child can be treated as an outpatient and the reasons for rejecting such treatment if institutionalization is recommended; and

  (d) whether, with treatment, there is a substantial probability that the child will attain competency and if so, when the child is expected to attain competency and the availability of inpatient and outpatient treatment agencies or facilities in the local geographical area;

(3) A statement of the factual basis upon which the diagnosis and opinion are based; and

(4) If the examination could not be conducted because the child is unwilling to participate, a statement to that effect with an opinion, if possible, as to whether the child's unwillingness was the result of mental illness or cognitive

impairment.

Subd. 4. Hearing and Determination of Competency.

(A) *Hearing and Notice.* Upon receipt of the report and notice to the parties, the court shall hold a hearing within ten (10) days to review the report with the parties. If either party objects to the report's conclusion regarding the child's competency to proceed, the court shall hold a hearing within ten (10) days on the issue of the child's competency to proceed.

(B) *Going Forward with Evidence*. If the child's counsel moved for the examination, the child's counsel shall go forward first with evidence at the hearing. If the prosecuting attorney or the court on its own initiative, moved for the examination, the prosecuting attorney shall go forward with evidence unless the court otherwise directs.

(C) *Report and Evidence*. The examination report and other evidence as to the child's mental condition may be admitted at the hearing. The person who prepared the report or any individual designated by that person as a source of information for preparation of the report, other than the child or the child's counsel, is considered the court's witness and may be called and cross-examined as such by either party.

(D) *Child's Counsel as Witness*. The child's counsel may testify as to personal observations of and conversations with the child to the extent that attorney-client privilege is not violated, and continue to represent the child. The prosecuting attorney may examine the child's counsel testifying to such matter.

The court may inquire of the child's counsel concerning the attorney-client relationship and the child's ability to communicate effectively with the child's counsel. However, the court may not require the child's counsel to divulge communications in violation of the attorney-client privilege. The prosecuting attorney may not cross-examine the child's counsel responding to the court's inquiry.

(E) *Decision and Sufficiency of Evidence*. If the court determines that the child is competent by the greater weight of evidence, the court shall enter a written order finding competency. Otherwise, the court shall enter a written order finding incompetency. The court shall enter its written order within fifteen (15) days of the hearing.

Subd. 5. Effect of Finding on Issue of Competency to Proceed.

(A) *Finding of Competency.* If the court determines that the child is competent to proceed, the proceedings against the child shall resume.

(B) *Finding of Incompetency.* If the offense is a misdemeanor, juvenile petty offense, or juvenile traffic offense, and the court determines that the child is incompetent to

proceed, the matter shall be dismissed. If the offense is a gross misdemeanor, and the court determines that the child is incompetent to proceed, the court has the discretion to dismiss or suspend the proceedings against the child except as provided by Rule 20.01, subdivision 7. If the offense is a felony, and the court determines that the child is incompetent to proceed, the proceedings against the child shall be further suspended except as provided by Rule 20.01, subdivision 7.

(1) If the court determines that the child is mentally ill or cognitively impaired so as to be incapable of understanding the proceedings or participation in the defense, the court shall order any existing civil commitment continued. If the child is not under commitment, the court may direct civil commitment proceedings be initiated, and the child confined in accordance with the provisions of the Minnesota Commitment Act, Chapter 253B.

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

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

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. The court shall provide a copy of the reports to the prosecuting attorney and to the child's counsel.

Unless the 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.

Subd. 7. Dismissal of Proceedings.

(A) Delinquency and extended jurisdiction juvenile proceedings shall be dismissed upon the earlier of the following:

(1) the child's nineteenth (19) birthday in the case of a delinquency, or twenty first (21) birthday if a designation or motion for extended jurisdiction juvenile proceedings is pending;

(2) for all cases except murder, the expiration of one (1) year from the date of the finding of the child's incompetency to proceed unless the prosecuting attorney, before the expiration of the one (1) year period, files a written notice of intention to prosecute the child when the child has been restored to competency. Such a notice shall extend the suspension of proceeding for one (1) year from the date of filing subject to Rule 20.01, subdivision 7(A).

(B) For all cases pending certification except murder, proceedings shall be dismissed upon the expiration of three (3) years from the date of the finding of the child's incompetency unless the prosecuting attorney, before the expiration of the three (3) year period, files a written notice of intention to prosecute the child when the child has been restored to competency. Murder charges shall not be dismissed based upon a finding of incompetency.

Subd. 8. Determination of Legal Issues Not Requiring Child's Participation. The fact that the child is incompetent to proceed shall not preclude the child's counsel from making any legal objection or defense that can be fairly determined without the personal participation of such child.

Subd. 9. Admissibility of Child's Statements. When a child is examined under this rule, any statement made by the child for the purpose of the examination and any evidence derived from the examination shall be admissible in evidence only at the proceedings to determine whether the child is competent to proceed.

(Amended effective September 1, 2018.)

Rule 20.02 Defense of Mental Illness or Cognitive Impairment at the Time of the Offense

Subdivision 1. When Raised.

(A) If the child intends to raise mental illness or cognitive impairment as a defense, the child's counsel shall advise the court and prosecuting attorney in writing before the omnibus hearing or no less than ten (10) days before the trial, whichever is earlier. The notice shall provide the court and prosecuting attorney with a statement of particulars showing the nature of the mental illness or cognitive impairment expected to be proved and the names and addresses of witnesses expected to prove it.

(B) The court, upon good cause shown and in its discretion, may waive these requirements and permit the introduction of the defense, or may continue the hearing for the purpose of an examination in accordance with the procedures in this rule.

(C) A continuance granted for an examination will toll the speedy trial rule and the limitation on detention pending adjudication and disposition.

Subd. 2. Examination of the Child. If the defense of mental illness or cognitive impairment

is raised, the court shall order an examination as described in Rule 20.01, subdivision 3(C). The court may order that the examination for competency under Rules 20.01 and 20.02 be conducted simultaneously.

Subd. 3. Refusal of the Child to be Examined. If the child does not participate in the examination so that the examiner is unable to make an adequate report to the court, the court may:

(A) prohibit the child from introducing evidence of the child's mental illness or cognitive impairment;
(B) strike any such evidence previously introduced;
(C) permit any other party to comment on and to introduce evidence of the child's refusal to cooperate to the trier of the facts; and
(D) make any such other ruling as it deems just.

Subd. 4. Disclosure of Reports and Records of Child's Mental Illness or Cognitive Impairment Examinations.

(A) *Order for Disclosure.* If a child raises the defense of mental illness or cognitive impairment, the trial court, on motion of the prosecuting attorney and notice to the child's counsel may order the child to furnish either to the court or to the prosecuting attorney copies of all medical reports and hospital and medical records previously or thereafter made concerning the mental illness or cognitive impairment of the child and relevant to the issue of the defense of mental illness or cognitive impairment. If the copies of the reports and records are furnished to the court for in camera review, the court shall inspect them to determine their relevancy. If the court determines they are relevant, they shall be delivered to the prosecuting attorney. Otherwise, they shall be returned to the child. If the child is unable to comply with the court order, a subpoena duces tecum may be issued.

(B) *Use of Reports and Records*. If an order for disclosure of reports and records under this subdivision is entered and copies are furnished to the prosecuting attorney, the reports and records and any evidence obtained from them may be admitted in evidence only upon the issue of the defense of mental illness or cognitive impairment.

Subd. 5. Report of Examination. At the conclusion of the examination, a written report of the examination shall be filed with the court, and the court shall provide a copy to the prosecuting attorney and to the child's counsel. The report shall not be disclosed to the public except by court order. The report of the examination shall contain:

(A) A diagnosis of the child's mental illness or cognitive impairment as requested by the court;
(B) If so directed by the court, an opinion as to whether, because of mental illness or cognitive impairment, the child at the time of the commission of the offense charged was laboring under such a defect of reason as not to know the nature of the act constituting the offense with which child is charged or that it was wrong;
(C) Any opinion requested by the court that is based on the examiner's diagnosis;

(D) A statement of the factual basis upon which the diagnosis and any opinion are based; and

(E) If the examination cannot be conducted by reason of the child's unwillingness to participate, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the child was the result of mental illness or cognitive impairment.

Subd. 6. Admissibility of Evidence at Trial. No evidence derived from the examination shall be received against the child unless the child has previously made his or her mental illness or cognitive impairment an issue in the case. If the child's mental illness or cognitive impairment is an issue, any party may call the person who examined the child at the direction of the court to testify as a witness at the trial. The report or portions thereof may be received in evidence to impeach the testimony of the person making it.

Subd. 7. Trial. When a child is examined under Rules 20.01 or 20.02, the admissibility at trial of any statements made by the child for the purposes of the examination and any evidence obtained as a result of such statements shall be determined by the following rules:

(A) *Notice by Child of Sole Defense of Mental Illness or Cognitive Impairment.* If a child notifies the court and prosecuting attorney under Rule 20.02, subdivision 1 of an intention to rely solely on the defense of mental illness or cognitive impairment, any statements made by the child for the purpose of the mental examination and evidence obtained as a result of the statements shall be admissible at the trial upon that issue.

(B) *Separate Trial of Defenses.* If a child notifies the court and prosecuting attorney under Rule 20.02, subdivision 1 of an intention to rely on the defense of mental illness or cognitive impairment together with a defense of not guilty, there shall be a separation of the two defenses with a sequential order of proof before the court in a continuous trial in which the defense of not guilty shall be heard and determined first, and then the defense of the child's mental illness or cognitive impairment.

(C) *Effect of Separate Trial.* If the child relies on the two defenses, the statements made by the child for the purpose of the mental examination and any evidence obtained as a result of such statements shall be admissible against the child only at that stage of the trial relating to the defense of mental illness or cognitive impairment.

(D) *Procedure Upon Separated Trial of Defenses.*

(1) Court Trial for Child Alleged to be Delinquent or Charged with a Juvenile Petty or Juvenile Traffic Offense. Upon the trial of the defense of not guilty the court shall determine whether the elements of the offense charged have been proved beyond a reasonable doubt. If the court determines that the elements of the offense have not been proved beyond a reasonable doubt, the court shall enter findings and order a dismissal pursuant to Rule 13.09. If the court determines that the elements of the offense have been proved beyond a

reasonable doubt and the child is relying on the sole defense of mental illness or cognitive impairment, the defense of mental illness or cognitive impairment shall then be tried and determined by the court. The child shall have the burden of proving the defense of mental illness or cognitive impairment by a preponderance of the evidence. Based upon that determination the court shall make a finding of:

(a) not guilty by reason of mental illness; or
(b) not guilty by reason of cognitive impairment; or
(c) guilty.

The court shall enter findings pursuant to Rule 13.09.

(2) Extended Jurisdiction Juvenile Proceedings. A court trial in an extended jurisdiction juvenile proceeding shall be conducted pursuant to Rule 20.02, subdivision 7(D)(1). A jury trial in an extended jurisdiction juvenile proceeding shall be conducted pursuant to Minnesota Rules of Criminal Procedure 20.02, subdivision 7.

Subd. 8. Procedure After Hearing.

(A) *Mental Illness or Cognitive Impairment Not Proven.* After a finding of guilty and the defense of mental illness or cognitive impairment not proven, the court shall schedule and conduct a disposition hearing. The issues of the child's mental illness or cognitive impairment shall be considered by the court at disposition.

(B) *Mental Illness or Cognitive Impairment Proven.* When a child is found not guilty by reason of mental illness or cognitive impairment,
(1) the court shall order any existing civil commitment continued. If the child is not under commitment, the court may order the child held at a shelter or treatment facility for up to seventy-two (72) hours and shall direct civil commitment proceedings be initiated;
(2) if it is determined that the child does not meet the criteria for civil commitment jurisdiction and the child is under CHIPS jurisdiction, the court shall order such jurisdiction be continued. If the child is not under CHIPS jurisdiction, the court may order the child held for up to seventy-two (72) hours in an appropriate facility and shall direct CHIPS proceedings be initiated.

(Amended effective September 1, 2018.)

Rule 20.03 Simultaneous Examinations

The court may order a civil commitment examination under Minn. Stat. ch. 253B, or successor statute, a competency examination under Rule 20.01, and an examination under Rule 20.02 to all be conducted simultaneously.

(Adopted effective July 1, 2015.)

Comment--Rule 20

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.

"A determination of competency, even in the context of juvenile adjudicatory proceedings, is a fundamental right. Because of this and because dispositions in juvenile proceedings, including rehabilitative dispositions, may involve both punishment and a substantial loss of liberty, the level of competence required to permit a child's participation in juvenile court proceedings can be no less than the competence demanded for trial or sentencing of an adult." In re Welfare of D.D.N., 582 N.W.2d 278, 281 (Minn. Ct. App. 1998) (citation omitted). The court has a continuing obligation to inquire into a juvenile's competency to stand trial when substantial information exists, or the child's observed demeanor raises doubts as to competency. In re Welfare of S.W.T., 277 N.W.2d 507, 512 (Minn. 1979). C.f. Drope v. Missouri, 420 U.S. 162, 179 (1975); Pate v. Robinson, 383 U.S. 375, 385 (1966); State v. Jensen, 278 Minn. 212, 215, 153 N.W.2d 339 (Minn. 1967).

A juvenile delinquency proceeding is not a criminal proceeding. See Minnesota Statutes, section 260B.225 (2002) (stating a violation of a state or local law or ordinance by a child before becoming 18 is not a crime). Although the right to counsel has been recognized for juveniles in In re Gault, 387 U.S. 1, 41 (1967), the corollary right to self-representation has not been established in the juvenile context. The Committee recognized that children subject to competency proceedings may be vulnerable; therefore, it would not be appropriate to allow a child to waive counsel prior to a court determining that the child is competent.

RULE 21. APPEALS

Rule 21.01 Generally

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.

(Amended effective September 1, 2005.)

Rule 21.02 Proceedings in Forma Pauperis

Subdivision 1. Generally. An indigent child wanting to appeal, cross-appeal, or defend an appeal taken by the prosecuting attorney shall make application to the office of the state public defender.

Upon the administrative determination by the state public defender's office that the applicant is financially and otherwise eligible for representation, the state public defender is automatically appointed for that purpose without order of the trial court. Any applicant who contests a decision of the state public defender's office regarding eligibility may apply to the Minnesota Supreme Court for relief.

If the parents of a child are financially able to contribute to some or all of the costs of representation, they may be ordered to pay the State of Minnesota all or a portion of those costs.

Subd. 2. Exception for Juvenile Petty Offenders and Juvenile Traffic Offenders. The state public defender may, in its discretion, agree to represent a juvenile traffic offender or a juvenile petty offender who wants to appeal, cross-appeal, or defend an appeal taken by the prosecuting attorney if, after an administrative determination by the state public defender's office, the child is found financially eligible for representation.

(Amended effective Jan. 1, 2008)

Rule 21.03 Appeal by Child

Subdivision 1. Right of Appeal. A child may appeal as of right from an adverse final order and certain non-final orders, as enumerated in Rule 21.03, subdivisions 1(A) and (B). In addition, a child shall be permitted to seek a discretionary appeal as provided for in Minnesota Rules of Criminal Procedure 28.02, subdivision 3. A motion for a new trial is not necessary in order to appeal.

(A) *Final Orders.* Final orders include orders for:
- (1) certification to adult court, whether the order is entered or stayed pursuant to Rule 21.03, subdivision 3;
- (2) continuance without adjudication and disposition in delinquency proceedings;
- (3) adjudication and disposition in delinquency proceedings;
- (4) adjudication and disposition in juvenile petty or juvenile traffic offender proceedings;
- (5) denial of motion for new trial;

(6) extended jurisdiction juvenile prosecution designation, whether the order is entered or stayed pursuant to Rule 21.03, subdivision 3;
(7) conviction, disposition, and sentencing of an extended jurisdiction juvenile;
(8) an order, on the prosecuting attorney's motion, finding the child incompetent, if the underlying offense would be a felony or a gross misdemeanor if the offense were committed by an adult;
(9) an order modifying a disposition;
(10) an order revoking probation including an order adjudicating a child delinquent after the child was granted a continuance without adjudication;
(11) an order revoking extended jurisdiction juvenile status; and
(12) an order revoking the stay of the adult sentence of an extended jurisdiction juvenile.

(B) *Non-Final Orders.* A child may appeal from the following non-final orders:
(1) an order refusing or imposing conditions of release; and
(2) an order granting a new trial when a child's motion for acquittal is denied, if the underlying offense would be a felony or a gross misdemeanor if the offense were committed by an adult.

Subd. 2. Procedure for Appeals.

(A) *Orders Revoking Extended Jurisdiction Juvenile Status and Orders Revoking the Stayed Adult Sentence of an Extended Jurisdiction Juvenile.* Probationer appeals under Rule 21.03, subdivision 1(A)(11) and (12) shall be governed by the procedure provided for appeal from a sentence by Minnesota Rules of Criminal Procedure 27.04, subdivision 3(4) and 28.05.

(B) *All Other Appealable Orders.* All other juvenile appeals shall proceed as follows:

(1) *Time for Taking an Appeal.* An appeal shall be taken within thirty (30) days after service of the notice of filing of the appealable order upon the child's counsel by the court administrator as provided in Rule 28.

(2) *Notice of Appeal and Filing.* The appellant shall file the following documents with the clerk of the appellate courts:
(a) a notice of appeal naming the party taking the appeal, identifying the order being appealed, and listing the names, addresses, and telephone numbers of all counsel;
(b) proof of service of notice of appeal on the adverse party, the district court administrator, and the court reporter;
(c) a copy of the judgment or order appealed from; and
(d) the statement of the case as provided for by Minnesota Rules of Civil Appellate Procedure 133.03.

When the disposition is ordered in a county other than the one in which the

child pled guilty or was found to have committed the offense(s), the appellant shall serve notice of appeal on the prosecuting attorney, court administrator, and court reporter in the county where the child pled guilty or was found to have committed the offense(s) as well as the prosecuting attorney, court administrator and court reporter where the disposition was ordered. Proof of service of notice of appeal on all of these persons shall be filed with the clerk of the appellate courts.

Whether a filing fee is required shall be determined pursuant to Minnesota Rules of Civil Appellate Procedure 103.01, subdivision 3. A cost bond is not required.

Except for the timely filing of the notice of appeal, if a party fails to comply with these rules, the validity of the appeal may not be affected except as deemed appropriate by the court of appeals.

(3) *Transcript of Proceedings and Transmission of the Transcript and Record.* The Minnesota Rules of Civil Appellate Procedure shall govern the transcription of the proceedings and the transmission of the transcription and record to the court of appeals except as modified here:

(a) Within ten (10) days of filing the notice of appeal, appellant shall order the necessary transcript and notify the court reporter that the transcript is due within thirty (30) days of the court reporter's receipt of the appellant's request for transcript.

(b) For parties represented by the state public defender, payment for transcripts will be made after receipt of the transcripts.

(c) If the parties have stipulated to the accuracy of a transcript of video or audio exhibits and made the transcript part of the district court record, it becomes part of the record on appeal, and it is not necessary for the court reporter to transcribe the exhibits. If no such transcript exists, a transcript need not be prepared unless expressly requested by the appellant or the respondent. If the exhibit must be transcribed, the court reporter need not certify the correctness of this transcript.

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

(a) Extended Jurisdiction Juvenile and Certification Determinations.

(i) The appellant shall serve and file the appellant's brief and addendum 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

addendum within thirty (30) days after the filing of the notice of appeal.

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

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

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

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

(i) The appellant shall serve and file the appellant's brief and addendum 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 addendum within forty-five (45) days after the filing of the notice of appeal.

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

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

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

Subd. 3. Stay Pending Appeal.

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

In cases certified to adult court, if a stay was granted by the juvenile court, the district court shall stay further adult criminal proceedings pending the filing of a final decision on appeal. By agreement of the parties, the adult case may proceed through the omnibus hearing.

If a stay is granted conditions of release must be set pursuant to Rule 21.03,

subdivision 4(B).

(B) *Placement Pending Appeal.*

(1) Upon Certification. If the district court determines that a certified child should be detained, placement pending appeal shall be governed by Minnesota Rules of Criminal Procedure 6.02, and detention in an adult facility shall be presumed.

(2) Other Cases. If the child is detained, the reasons for the place of detention must be stated on the record, and the detention must comply with Minnesota Statute, section 260B.176.

Subd. 4. Release of Child.

(A) *Motion for Release Pending Appeal.* When release is not addressed in the motion for a stay, application for release pending appeal shall be made to the trial court. If the trial court refuses to release a child pending appeal, or imposes conditions of release, the trial court shall state the reasons on the record. Thereafter, if an appeal is pending, a motion for release or for modification of the conditions of release pending review may be made to the court of appeals. The motion shall be determined upon such documents and portions of the record as the parties shall present. The court of appeals may order the release of a child with or without conditions, pending disposition of the motion. The motion shall be determined on an expedited basis.

(B) *Conditions of Release.* Minnesota Rules of Criminal Procedure 6.02 shall govern conditions of release upon certification. If a stay is granted under Rule 21.03, subdivision 3 of this rule, Minnesota Statute, section 260B.176 shall govern conditions of release. The child has the burden of proving that the appeal is not frivolous or taken for delay and that the child does not pose a risk for flight, is not likely to commit a serious crime, and is not likely to tamper with witnesses. The trial court shall make written findings on each of the above factors. The trial court shall take into consideration that:

(1) the child may be compelled to serve the sentence or disposition imposed before the appellate court has an opportunity to decide the case; and

(2) the child may be confined for a longer time pending the appeal than would be possible under the potential sentence or disposition for the offense charged.

(C) *Credit for Time Spent in Custody.* The time a child is in custody pending an appeal may be considered by the trial court in determining the disposition imposed in juvenile proceedings.

(Amended effective July 1, 2015.)

Rule 21.04 Appeal by Prosecuting Attorney

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 motion for designation as an extended jurisdiction juvenile prosecution;

(C) denial of a motion to revoke extended jurisdiction juvenile status following an admission of a violation of probation or a determination that a violation of probation has been proven;

(D) denial of a motion to revoke the stay of the adult sentence of an extended jurisdiction juvenile following an admission of a violation of probation or a determination that a violation of probation has been proven;

(E) pretrial orders, including suppression orders;

(F) orders dismissing the charging document for lack of probable cause when the dismissal was based solely on a question of law; and

(G) a continuance ordered in contravention of Minnesota Statutes, section 260B.198, subd. 7.

Appeals from disposition or sentence shall only include matters that arose after adjudication or conviction. In addition to all powers of review presently existing, the appellate 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.

Subd. 2. Attorney Fees. The child shall be allowed reasonable attorney fees and costs incurred for appeal. The child's attorney fees and costs shall be paid by the governmental unit responsible for prosecution of the case.

Subd. 3. Procedure for Appeals.

(A) Prosecutorial appeals under Rule 21.04, subdivision 1(A), (B), and (F), shall be governed by Rule 21.03, subdivision 2.

(B) Prosecutorial appeals under Rule 21.04, subdivision 1(C) and (D) shall be governed by the procedure provided for appeal from a sentence by Minnesota Rules of Criminal Procedure 27.04, subdivision 3(4) and 28.05.

(C) Prosecutorial appeals under Rule 21.04, subdivision 1(E) shall proceed as follows:

(1) *Time for Appeal.* The prosecuting attorney may not appeal until all issues raised during the evidentiary hearing and pretrial conference have been determined by the trial court. The appeal shall be taken within twenty (20) 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.

(2) *Notice of Appeal and Filing.* Rule 21.03, subdivision 2(B) shall govern notice of appeal and filing of an appeal by the prosecuting attorney. If a transcript of the proceedings is necessary, the prosecuting attorney must file a copy of the request for transcript with the clerk of the appellate court.

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

(a) Within fifteen (15) days of delivery of the transcripts, appellant shall file the appellant's brief with the clerk of the appellate courts together with proof of service upon the respondent.

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

(c) Within eight (8) days of service of appellant's brief upon respondent, the respondent shall file the respondent's brief with the appellate court clerk together with proof of service upon the appellant.

Subd. 4. Stay. Upon oral notice that the prosecuting attorney intends to appeal a pretrial order, the trial court shall order a stay of the proceedings for twenty (20) days to allow time to perfect the appeal.

Subd. 5. Conditions of Release. Upon appeal by the prosecuting attorney of a pretrial order, the conditions for the child's release pending the appeal shall be governed by Rule 5, or, for children certified to adult court, Minnesota Rules of Criminal Procedure 6.02, subdivisions 1 and 2. The trial court shall consider whether the child may be confined for a longer time pending the appeal than would be possible under the potential sentence or disposition for the offense charged.

Subd. 6. Cross-Appeal by Child. Upon appeal by the prosecuting attorney, the child may obtain review of any pretrial order which will adversely affect the child by filing a notice of cross-appeal with the clerk of the appellate courts and the trial court administrator together with proof of service on the prosecuting attorney. The notice of cross-appeal shall be filed within ten (10) days after service of notice of the appeal by the prosecuting attorney. Failure to serve the notice does not deprive the court of appeals of jurisdiction over a child's cross-appeal but is ground for such action as the court of appeals deems appropriate, including dismissal of the cross-appeal.

(Amended effective July 1, 2015.)

Rule 21.05 Appeal by Parent(s), Legal Guardian or Legal Custodian of the Child

A parent, legal guardian, or legal custodian who participated separately pursuant to Rule 2.04,

subdivision 3 may appeal from a disposition.

A parent, legal guardian, or legal custodian who is indigent may apply to the office of the state public defender for legal representation.

Parents' right to appeal is limited to cases where they have a liberty or property interest involved and their interest is adverse to that of the child.

The procedure for appeals by a parent, legal guardian, or legal custodian shall be governed by Rule 21.03, subdivision 2.

(Amended effective September 1, 2005.)

Rule 21.06 Certified Questions to the Court of Appeals

After adjudication or sentencing, or before hearing on a motion to dismiss, the trial court may report any question of law which is important and doubtful to the court of appeals, if the child requests or consents. Upon report of the question all further district court proceedings shall be stayed. Other cases pending in the trial court which involve or depend on the same question shall also be stayed if a stay is requested or consented to by the juvenile involved.

The aggrieved party shall file a brief with the court of appeals and serve it on all parties within fifteen (15) days of the trial court's report of the question. Other parties shall have eight (8) days to file responsive briefs. The court of appeals shall expedite its decision on certified questions.

Rule 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.

Comment--Rule 21

An appeal may be taken by petitioning the Supreme Court of Minnesota for review pursuant to Minn. R. Civ. App. P. 117 or by petitioning for accelerated review pursuant to Minn. R. Civ. App. P. 118.

The scope of review shall be pursuant to Minn. R. Civ. App. P. 103.04.

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(4) 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).

A child's representation by the public defender is governed by Minnesota Statutes, chapter 611. The public defender is not required to appeal from misdemeanor dispositions or adjudications, but may do so at its discretion.

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 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).

RULE 22. SUBSTITUTION OF JUDGE

Rule 22.01 Before or During Trial

If by reason of death, sickness or other disability, the judge before whom pretrial proceedings or a jury trial has commenced is unable to proceed, any other judge sitting in or assigned to the court, upon certification of familiarity with the record of the proceedings or trial, may proceed with and finish the proceedings or trial.

Rule 22.02 After Verdict or Finding of Guilt

If by reason of absence, death, sickness, or other disability, the judge before whom the child has been tried is unable to perform the duties to be performed by the court after a verdict or finding of guilt, any other judge sitting in or assigned to the court may perform those duties; but if such other judge is satisfied that those duties cannot be performed because of not presiding at the trial, such judge may grant a new trial.

Rule 22.03 Notice to Remove

Subdivision 1. Service and Filing. The child's counsel or the prosecuting attorney may serve on the other parties and file with the court administrator a notice to remove the judge assigned to a trial or hearing. The notice shall be served and filed within seven (7) days after the child's counsel or the prosecuting attorney receives written notice, or oral notice in court on the record, of which

judge is to preside at the trial or hearing but, in any event, not later than the commencement of the trial or the hearing.

Subd. 2. Removal of Presiding Judge. No notice shall be effective against a judge who has already presided at the trial, probable cause hearing, or other evidentiary hearing of which the party had notice, except where a party shows cause why a judge should be removed. After a party has once disqualified a presiding judge as a matter of right, that party may disqualify the substitute judge only upon an affirmative showing of cause.

Rule 22.04 Assignment of New Judge

Upon the removal, disqualification, disability, recusal or unavailability of a judge under this rule, the chief judge of the judicial district shall assign any other judge within the district to hear the matter. If there is no other judge of the district who is qualified to hear the matter, the chief judge of the district shall notify the chief justice. The chief justice shall then assign a judge of another district to preside over the matter.

Comment--Rule 22

This rule is modeled after Minn. R. Crim. P. 26.03, subd. 14. The rule permits the child's counsel or prosecuting attorney to serve and file a notice to remove a judge as a matter of right without cause. Only one such removal as a matter of right is permitted to a party. Other removals must be for cause.

The right to a fair trial before an impartial tribunal is a fundamental due process requirement. See, e.g., Estes v. Texas, 381 U.S. 532, 85 S.Ct. 1628, 14 L.Ed.2d. 543 (1965). The Supreme Court in In re Murchison, 349 U.S.133, 75 S.Ct. 623 (1955), explained the importance of an impartial tribunal: "Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness...[T]o perform its high function in the best way, `justice must satisfy the appearance of justice.'" 349 U.S. at 136 citing Offutt v. United States, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954). Moreover, the fact finder must make a determination based only on the evidence in the record in order to ensure effective appellate review. See, e.g., Patterson v. Colorado, 205 U.S. 454 (1907).

The appearance, if not the actuality, of neutral and unbiased fact-finding may be compromised if the judge has actual knowledge of the social history or prior court history of the child. See, e.g., In re Gladys R., 1 Cal.3d 855, 464 P.2d 127, 83 Cal. Rptr. 671 (1970)(reversible error for juvenile court to review social study report before jurisdictional hearing). The problem is especially acute in delinquency proceedings because juveniles, with the exception of extended jurisdiction juveniles, do not have the right to a jury trial. McKeiver v. Pennsylvania, 403 U.S. 528, 91 S.Ct. 1976, 29 L.Ed. 647 (1970). Whenever a judge knows information that is not admissible at trial but is prejudicial to a child, the impartiality of the tribunal is open to question. A.B.A. Juvenile Justice Standards Relating to Adjudication, Standard 4.1 at 54. The problem of impartiality is particularly troublesome in juvenile court proceedings because the same judge typically handles the same case at different stages. For example, at a detention hearing, a judge may be exposed to a youth's social history file and prior record of police contacts and delinquency adjudications, all of which bear on the issue

of appropriate pretrial placement. When the same judge is subsequently called upon 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 Welfare of J.P.L., 359 N.W.2d 622 (Minn. Ct. App. 1984).

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

RULE 23. REFEREE

Rule 23.01 Authorization to Hear Cases

A referee may hear matters as authorized by statute.

Rule 23.02 Objection to Assignment of Referee

The child's counsel or the prosecuting attorney may object to a referee presiding at a hearing. This objection shall be in writing and filed with the court within three (3) days after being informed that the matter is to be heard by a referee or the right to object is waived. The court may permit the filing of a written objection at any time. After the filing of an objection, a judge shall hear any motion and preside at any hearing.

Rule 23.03 Notice to Remove a Particular Referee

The child's counsel or the prosecuting attorney may serve on the other party and file with the court administrator a notice to remove a particular referee assigned to a trial or hearing in the same manner as a judge may be removed under Rule 22. After a party has once disqualified a referee as a matter of right, that party may disqualify the substitute judge or referee only upon an affirmative showing of cause.

Rule 23.04 Transmittal of Findings

Upon the conclusion of a hearing, the referee shall transmit to the judge findings and recommendations in writing. Notice of the findings of the referee together with a statement relative to the right to a review before a judge shall be given either orally on the record, or in writing to the child, the child's counsel, the child's parent(s), legal guardian or legal custodian and their counsel, the prosecuting attorney and to any other person that the court may direct.

Rule 23.05 Review

Subdivision 1. Generally. A matter which has been decided by a referee may be reviewed in whole or in part by a judge.

Subd. 2. Filing. A motion for a review by a judge must be filed with the court within ten

(10) days after the referee's findings and recommendations have been provided to the child, child's counsel, prosecuting attorney, child's parents, legal guardian or legal custodian and their counsel pursuant to Rule 28.

Subd. 3. Right of Review Upon Filing of Timely Motion.

(A) *Right of Child.* The child is entitled to a review by a judge in any matter upon which a referee has made findings or recommendations.

(B) *Right of Prosecuting Attorney.* The prosecuting attorney is entitled to a review by a judge from any pre-trial findings or recommendations of a referee. The prosecuting attorney is not entitled to a review on any pretrial findings by a judge after jeopardy has attached.

(C) *Right of Parent(s), Legal Guardian or Legal Custodian.* The child's parent(s), legal guardian or legal custodian are entitled to a review by a judge of a referee's findings or recommendations made after the allegations of a charging document have been proved.

Subd. 4. The Court. The judge may grant a review at any time before confirming the findings and recommendation of the referee.

Subd. 5. Procedure. A review by a judge may be of the verbatim record or de novo in whole or in part.

Rule 23.06 Order of the Court

The findings and recommendations of the referee become the order of the court when confirmed by the judge subject to review pursuant to Rule 23.05.

Comment--Rule 23

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

RULE 24. GUARDIAN AD LITEM

Rule 24.01 Appointment

(A) Except as provided in Rule 24.01(B), the court shall appoint a guardian ad litem to act in place of a parent, legal guardian or legal custodian to protect the best interests of the child when it appears, at any stage of the proceedings, that the child is without a parent, legal guardian or legal custodian. If the parent, legal guardian or legal custodian is unavailable, incompetent, indifferent to, hostile to, or has interests in conflict with the child's best interests, a guardian ad litem shall be appointed.

(B) The court may determine not to appoint a guardian ad litem when:
(1) counsel has been appointed or is otherwise retained for the child, and
(2) the court finds that the best interests of the child are otherwise protected.

(C) The court may appoint a guardian ad litem on its own motion or on the motion of the child's counsel or the prosecuting attorney when the court determines that an appointment is in the best interests of the child.

Rule 24.02 General Responsibilities of Guardians ad Litem

In every juvenile delinquency court case in which a guardian ad litem is appointed, the guardian ad litem shall:

(1) conduct an independent investigation to determine the facts relevant to the situation of the child and the family, which must include, unless specifically excluded by the court: reviewing relevant documents; meeting with and observing the child in the home setting and considering the child's wishes, as appropriate; and interviewing parents, caregivers, and others relevant to the case;
(2) advocate for the child's best interests by participating in appropriate aspects of the case and advocating for appropriate community services when necessary;
(3) maintain the confidentiality of information related to a case, with the exception of sharing information as permitted by law to promote cooperative solutions that are in the best interests of the child;
(4) monitor the child's best interests throughout the judicial proceeding; and
(5) present written reports on the child's best interests that include conclusions and recommendations and the facts upon which they are based.

Rule 24.03. Guardian ad Litem not Counsel for Child

When the court appoints a guardian ad litem, the guardian ad litem shall not be the child's counsel.

RULE 25. NOTICE

Rule 25.01 Summons, Notice in Lieu of Summons, Oral Notice on the Record, Service by Electronic Transmission and Notice by Telephone

Subdivision 1. Summons. A summons is a document personally served on a person directing that person to appear before the court at a specified time and place. If the person summoned fails to appear, the court may issue an arrest warrant or, for the child, a warrant for immediate custody.

Subd. 2. Notice in Lieu of Summons. A notice in lieu of summons is a document mailed, or electronically transmitted as authorized by the State Court Administrator, by the court administrator to a person who is directed to appear in court at a specified time and place. If a person appears

pursuant to the mailed or electronically transmitted notice, the person waives the right to personal service of the summons. If the person fails to appear, the court shall not issue a warrant until personal service is made or attempted unless grounds exist under Rule 4.03.

Subd. 3. Oral Notice on the Record. The court may schedule further proceedings by oral notice to all persons present. Oral notice on the record shall be sufficient notice to all persons present. Any person not present who is entitled to notice, shall receive written notice.

Subd. 4. Detention Hearings: Service by Facsimile or Other Electronic Transmission or Notice by Telephone Permitted.

(A) *Service By Electronic Transmission.* If a child is detained pending a detention hearing in a place of detention other than home detention or at home on electronic home monitoring, the court administrator shall ensure that the child, child's attorney, prosecuting attorney, child's parent(s), legal guardian(s) or legal custodian(s), or spouse of the child receives notice that the child is in custody, and notice of the detention hearing. The court administrator shall also provide to the Office of the Public Defender or the child's attorney copies of the reports filed with the court by the detaining officer and the supervisor of the place of detention. Defense counsel shall have immediate and continuing access to the child. The notice in lieu of summons and copies of the reports may be provided by electronic transmission, mailed notice, or hand delivery.

(B) *Notice By Telephone.* If the child, child's attorney, prosecuting attorney, child's parent(s), legal guardian(s) or legal custodian(s) or spouse of the child has not received notice of the time and place of the detention hearing and effective service by electronic transmission, mail or hand delivery of the notice in lieu of summons is

not possible, the court administrator may provide notice of the time and place of the detention hearing by telephone call.

(Amended effective July 1, 2015.)

Rule 25.02 Content

Any summons or notice in lieu of summons shall include:

(A) a copy of the 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.

(Amended effective September 1, 2005.)

Rule 25.03 Procedure for Notification

Subdivision 1. First Notice. After a charging document has been filed, the court administrator shall schedule a hearing as required by these rules. A notice in lieu of summons shall be served by first class mail, or electronically transmitted as authorized by the State Court Administrator, on the following:

(A) child and parent(s) or person(s) with custody of the child; and

(B) child's counsel, prosecuting attorney, spouse of child and their counsel.

The court may waive notice to the parent(s), legal guardian, legal custodian, or spouse of the child if it would be in the child's best interest to proceed without their presence.

Subd. 2. Personal Service. If the child and/or parent(s) fail to appear in response to one or more notices in lieu of summons served by mail or electronic transmission, a summons may be served personally in the manner provided by Minnesota law. The summons shall advise the person served that a failure to appear may result in the court issuing a warrant for arrest.

Subd. 3. Warrant for Arrest or Immediate Custody. A warrant for arrest or immediate custody may be issued by the court for a child or parent(s) who fail to appear in response to a summons which has been personally served or where reasonable efforts at personal service have been made.

Subd. 4. Timing. A summons shall be personally served at least five (5) days before the hearing. A notice in lieu of summons shall be mailed or electronically transmitted at least eight (8) days before the hearing. These times may be waived by a person or by the court for good cause shown.

Subd. 5. Proof of Service.

(A) *Personal Service.* On or before the date set for appearance, the person who served a summons by personal service shall file a written statement with the court showing:
  (1) that the summons was served;
  (2) the person on whom the summons was served; and
  (3) the date, time, and place of service.

(B) *Service by Mail or Electronic Transmission.* On or before the date set for appearance, the person who served notice in lieu of summons by mail or electronic transmission shall enter in the court record:
  (1) the name of the person to whom the summons or notice was sent;
  (2) the date the summons or notice was sent; and
  (3) whether the summons or notice was sent by first-class mail, certified mail, or electronic transmission.

(C) *Notice of Detention Hearing: Telephone Call.* The person providing notice of a detention hearing by telephone call shall file a document with the court or make an entry in the court record stating:

(1) the name, address and telephone number of the person who was contacted with notice of the detention hearing;

(2) the date and time of the telephone call or the efforts to do so;

(3) the reason why notice in lieu of summons was not sent by First Class Mail or other authorized means.

(Amended effective July 1, 2015.)

Rule 25.04 Waiver

Service is waived by voluntary appearance in court or by a written waiver of service filed with the court.

Comment--Rule 25

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 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, §§ 3 and 12; see Minn. Stat. § 260B.152, subd. 1 (2002). The rule also recognizes that notice may be sent by electronic transmission where authorized.

This rule allows for notice of a detention hearing to be provided by telephone call when, given the time remaining before the detention hearing, mailed or electronically transmitted notice in lieu of summons would not be effective. Notice by telephone is not permitted for any other type of hearing.

Historically, there have been some informal service methods for service of the prosecuting attorney and the public defender by each other and by the court, which were instituted for efficiency and cost-effectiveness. However, where the rules require a specific method of service, these informal methods of service may not be used. See City of Albert Lea v. Harrer, 381 N.W.2d 499 (Minn. Ct. App. 1986) (stating, "[t]he clerk and the city attorney cannot agree to ignore the rules").

In the appendix of these rules are samples of a notice in lieu of summons and a summons.

RULE 26. SUBPOENAS

Rule 26.01 Motion or Request for Subpoenas

On the court's own motion or at the request of the child's counsel or the prosecuting attorney, the clerk shall issue subpoenas requiring the attendance and testimony of witnesses and the production of records, documents or other tangible objects at any hearing.

Counsel for the parent(s), legal guardian and legal custodian of the child have the right to request the issuance of subpoenas requiring the attendance and testimony of witnesses and the production of records, documents or other tangible objects at any hearing after the allegations of the charging document have been proved.

Rule 26.02 Expense

The fees and mileage of witnesses shall be paid at public expense if the subpoena is issued by the court on its own motion or at the request of the prosecuting attorney.

If a subpoena is issued at the request of the child's counsel or counsel for the parent(s), legal guardian, or legal custodian, and the child or parent(s) of the child are unable to pay the fees and mileage of witnesses, these costs shall be paid at public expense, upon approval by the court, in whole or in part, depending on the ability of the child and the parent(s) of the child to pay. All other fees shall be paid by the requesting person unless otherwise ordered by the court.

Comment--Rule 26

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

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

RULE 27. MOTIONS

Rule 27.01 Motions to be Signed

Every motion shall be in writing, state with particularity the grounds, be signed by the person making the motion and filed with the court unless it is made in court and on the record.

Rule 27.02 Service of Motions

Subdivision 1. When Required. Every written motion along with any supporting documents shall be served on the child, the child's counsel, the prosecuting attorney and the parent(s), legal guardian or legal custodian of the child.

Subd. 2. How Made. The moving party shall serve the other parties. If the other parties are represented by counsel, the moving party shall serve the other parties' counsel unless the court orders otherwise. Service of motions may be made by personal service, by mail, or electronically as authorized or required by Rule 14 of the General Rules of Practice for the District Courts. Service by mail shall be complete upon mailing to the last known address of the person to be served. Service by authorized electronic means through the E-Filing System as defined by Rule 14 of the General Rules of Practice for the District Court is complete upon completion of the electronic transmission of the document(s) to the E-Filing System.

Subd. 3. Time. Any motion required by this rule to be served, along with any supporting documents, shall be served at least three (3) days before it is to be heard unless the court for good cause shown permits a motion to be made and served less than three (3) days before it is to be heard.

(Amended effective July 1, 2015.)

RULE 28. NOTICE OF ORDERS OR JUDGMENTS

Within five (5) days of filing of a written order or decision or entry of a judgment, the court administrator shall serve a copy of the written order on the child, the child's counsel, prosecuting attorney, probation officer, the parent(s), the legal guardian or legal custodian of the child and their counsel. The order shall be accompanied by a notice of filing, which shall include notice of the right to appeal a final order pursuant to Rule 21. The State Court Administrator shall develop a "notice of filing" form, which shall be used by court administrators.

(Amended effective Jan. 1, 2008)

RULE 29. RECORDING

Rule 29.01 Procedure

A verbatim recording of all hearings shall be made by a stenographic reporter or by an electronic reporter. If the recording is made by an electronic reporter, any requested transcripts shall be prepared by personnel assigned by the court.

Rule 29.02 Availability of Transcripts

Subdivision 1. Child's Counsel and Prosecuting Attorney. Transcripts of hearings for further use in the hearing or subsequent hearings, appeal, habeas corpus action or for other use as the court may approve, shall be made available to the child's counsel or the prosecuting attorney upon written request to the court reporter.

Subd. 2. Counsel for Parent(s), Legal Guardian or Legal Custodian. Transcripts of

hearings for use at dispositional hearings, for appeal from disposition hearings, or for other use as the court approves, shall be made available to counsel for the parent(s), legal guardian or legal custodian of the child when they participate pursuant to Rule 2.04, subdivision 3. Applications for transcripts shall be made to the court in writing or on the record.

Rule 29.03 Expense

If the person requesting a transcript is unable to pay the preparation cost, the person may apply to the court for an order directing the preparation and delivery of the transcript to the person requesting it, at public expense. Depending on the ability of the person to pay, the court may order partial reimbursement for the cost of transcript.

Comments – Rule 29

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

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

RULE 30. RECORDS

Rule 30.01 Generally

Subdivision 1. Records Defined. Juvenile court records include:

(A) all documents filed with the court;
(B) all documents maintained by the court;
(C) all reporter's notes and tapes, electronic recordings and transcripts of hearings and trials; and
(D) as relates to delinquency matters, all documents maintained by juvenile probation officers, county home schools and county detention agencies.

Subd. 2. Duration of Maintaining Records. The juvenile court shall maintain records as required by Minnesota Statute.

Rule 30.02 Availability of Juvenile Court Records

Subdivision 1. By Statute or Rule. Juvenile Court records shall be available for inspection, copying and release as required by statute or these rules. Access to all reporter's tapes and electronic recordings shall be governed by the Rules of Public Access to Records of the Judicial Branch. Other than for criminal justice and other government agencies, juvenile delinquency records in proceedings that are public under Minn. Stat. § 260B.163, subd. 1, shall not be remotely accessible, as defined in Rule 8, subdivision 2 of the Minnesota Rules of Public Access to Records of the Judicial Branch, but

may be made accessible in either electronic form or paper form at the court facility as permitted by Rule 8. Criminal justice and other government agencies shall have access to juvenile court records as permitted by Rule 8, subdivision 4 of the Minnesota Rules of Public Access to Records of the Judicial Branch.

Subd. 2. No Order Required.

(A) *Court and Court Personnel.* Juvenile court records shall be available to the court and court personnel without a court order.

(B) *Child's Counsel, Guardian Ad Litem, and Counsel for the Child's Parent(s), 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 appointed in the delinquency proceeding;

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

(C) *Prosecuting Attorney*. Juvenile court records shall be available for inspection, copying or release to the prosecuting attorney.

D) *Other*. The juvenile court shall forward data to agencies and others as required by Minnesota Statute.

Subd. 3. Court Order Required.

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

(1) a representative of a 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.

(Amended effective July 1, 2015.)

Comment--Rule 30

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" include 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.

References 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.

RULE 31. TIMING

Rule 31.01 Computation

Unless otherwise provided by statute or specific Minnesota Rules of Juvenile Procedure, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, a Sunday, a legal holiday, a day on which weather or other conditions result in the closing of the office of the court administrator of the court where the action is pending or where filing or service is either permitted or required to be made electronically, or a day on which unavailability of the computer system used by the court for electronic filing and service makes it impossible to accomplish service or filing, in which case the period runs until the end of the next day that is not one of the aforementioned days. When a period of time prescribed or allowed is three days or less, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. As used in these rules, "legal holiday" includes New Year's Day, Martin Luther King's Birthday, Washington's and Lincoln's Birthday (Presidents' Day), Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, the day after Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or Congress of the United States or by the State, and a day that the United States Mail does not operate.

(Amended effective July 1, 2015.)

Rule 31.02 Additional Time after Service by Mail or Electronic Service Late in the Day

Whenever a person has the right or is required to do an act within a prescribed period after the service of a notice or other paper and the notice or other paper is served by mail, three (3) days shall be added to the prescribed period. If service is made by electronic means and accomplished

after 5:00 p.m. Minnesota time on the day of service, one additional day shall be added to the prescribed period.

(Amended effective July 1, 2015.)

RULE 32. ELECTRONIC SERVICE, FILING, AND SIGNATURE

Rule 32.01 Service

Except where personal service is required by these rules, service shall be made by any means authorized by law, including electronically as authorized or required by Rule 14 of the General Rules of Practice for the District Courts. Any notices or copies required to be provided under these rules may also be provided electronically as authorized or required by Rule 14 of the General Rules of Practice for the District Courts.

Rule 32.02 Filing

Except as otherwise specified in these rules, documents may be filed electronically as authorized or required by Rule 14 of the General Rules of Practice for the District Courts. Notwithstanding Rule 14 of the General Rules of Practice for the District Courts, documents prepared and presented to the court during a court proceeding, including but not limited to a signed guilty plea petition or signed waiver of counsel, are not required to be filed electronically.

Rule 32.03 Signature

Any signature required under these rules may be applied electronically.

(Adopted effective July 1, 2015.)