

# JUVENILE COURT PROCEEDINGS

Rules Effective March 1, 1969

As Amended through August 1, 1980

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**ARTICLE 1. GENERAL PROVISIONS**

**Rule 1-1. Title; Purpose and Scope; Effective Date**

(1) These rules shall be known as the "Minnesota Juvenile Court Rules," and may be cited by the symbol "Minn. JCR," as in "Minn. JCR 1-1(1)."

(2) The purpose of these rules is to implement provisions of the Minnesota Juvenile Court Act (Minnesota Statutes Annotated, Chapter 260, sections of which are hereinafter cited as MSA § 260.000) in such a manner as to provide for the just determination of all juvenile court causes. To that end procedures in such causes shall be governed by these rules and the Minnesota Juvenile Court Act.

(3) These rules shall take effect on March 1, 1969. They shall govern all proceedings in juvenile court causes commenced after that date and all further proceedings in juvenile court causes pending as of that date.

**Rule 1-2. Definitions**

As used in these rules, unless the context otherwise requires, the term:

(a) "Adjudicatory hearing" means a hearing for the purpose of determining whether a child is delinquent or neglected or dependent or a traffic offender or whether parental rights should be terminated.

(b) "Cause" or "juvenile court cause" means any action over which the juvenile court has original and exclusive jurisdiction pursuant to MSA § 260.111, except an adoption action and proceedings for judicial consent to marriage.

(c) "Child" means an individual under 18 years of age or an individual under 21 years of age who is alleged to have been delinquent or to have committed a traffic offense prior to having become 18 years of age. A child is the subject of a cause if the petition filed or to be filed in the cause charges or is likely to charge that he is delinquent or neglected or dependent or that he is a traffic offender or that the parental rights of his parents should be terminated.

(d) "Court" or "juvenile court" means each Minnesota county probate court having juvenile court jurisdiction, and includes the judge of such a court and any referee appointed by the judge pursuant to MSA § 260.031.

(e) "Delinquent" means any one or more of the conditions specified in MSA § 260.015(5).

(f) "Dependent" means any one or more of the conditions specified in MSA § 260.015(6).

(g) "Detention" means the temporary placement of a child in a detention facility pending filing of a petition in a juvenile court cause, or pending disposition of a cause

commenced by filing of such petition. "Continued detention" means a detention extended beyond its original expiration time by order of the court.

(h) "Detention facility" means a facility authorized by MSA §§ 260.171(2) and .175 for detention purposes.

(i) "Dispositional hearing" means a hearing for the purpose of determining what shall be done with or about a child who has admitted the allegations of a delinquency or traffic offender petition or who has been adjudicated delinquent or neglected or dependent or a traffic offender or whose parents' parental rights have been adjudicated terminated.

(j) "Guardian" means the guardian of the person of a child appointed by order of a court.

(k) "Guardian ad litem" means a person appointed pursuant to Article 9 of these rules to protect the interests of a child in a juvenile court proceeding.

(l) "Hearing" means any proceeding in a juvenile court cause before the court, whether summary in nature or by examination of such witnesses as may be produced.

(m) "Neglected" means any one or more of the conditions specified in MSA § 260.015(10).

(n) "Parent" means the legal and natural parent of a child who is the subject of a juvenile court cause, or his parent by adoption if the child has been legally adopted. If the child has two legal and natural parents or two adoptive parents, as the case may be, the term "parent" means both such parents. If the child has neither a legal and natural parent nor an adoptive parent, the child's guardian shall be deemed his parent for purposes of these rules unless the court shall have appointed a guardian ad litem for the child pursuant to Article 9. Whenever the court appoints a guardian ad litem for the child, the guardian ad litem shall be deemed the child's parent for purposes of these rules.

(o) "Party" means a child who is the subject of a cause, his spouse, if any, his parent, the guardian of the child's person, if such a guardian has been appointed by order of the court, and any other person designated by the court as a party in a given cause.

(p) "Person" means an individual, association, corporation or partnership and the state or any of its political subdivisions, departments or agencies.

(q) "Petition" means the legal document by means of which a juvenile court cause is commenced.

(r) "Representative of the state" means the court, any member of the court's staff, including probation officers, the county attorney, any member of the county attorney's staff, a peace officer and any other employee or agent of the state or any of its political subdivisions, departments or agencies.

### **Rule 1-3. Recording of Hearings**

(1) A verbatim recording of all juvenile court hearings other than those in traffic offender causes shall be made by a stenographic reporter or by an electronic sound recording device. A verbatim recording of hearings in traffic offender causes need not be made unless the child who is the subject of the cause or his parents so requests. If the recording is made by an electronic sound recording device, such device shall be operated, and any required transcripts shall be prepared, by personnel assigned by the court for that purpose.

(2) Transcripts of juvenile court hearings for further use in the same cause or on appeal or in an habeas corpus action or for such other use as the court shall deem proper shall be made available to the parties upon application to the court.

(3) If a party applies to the court for a transcript of all or part of a juvenile court hearing for an authorized use, as hereinabove described, and such party makes a showing that he cannot afford to pay the cost of preparation of such transcript, the court shall direct the preparation and delivery of the transcript to such party at county expense.

(4) An application for a transcript shall be submitted to the court in writing or orally as part of any hearing of which a record is made.

(5) The court may order destruction of the verbatim recording of hearings in a juvenile court cause:

- (a) when the cause is dismissed; or
- (b) the later of:
  - (i) 6 months after the entry of an order adjudicating the child delinquent or neglected or dependent or a traffic offender or adjudicating the termination of his parent's parental rights, as the case may be; or
  - (ii) when the child is no longer in custody pursuant to an order of the court.

**Rule 1-4. Appearance of Attorneys**

(1) An attorney shall enter his appearance in a juvenile court cause by filing a written notice of appearance with the court, or by appearing personally at a hearing and advising the court that he is representing a party.

(2) An attorney who has entered his appearance shall not be permitted to withdraw from the cause until any appeal has been decided, except by leave of the court after notice of his intended withdrawal is served by him on the party he represents.

**Rule 1-5. Waiver of Rights**

(1) Any right accorded a party by these rules or the Minnesota Juvenile Court Act may be waived by such party with court permission, except a child's right to counsel at a hearing to determine whether a delinquency cause shall be referred for prosecution, when the cause involves an alleged act by the child which would be a felony if committed by an adult, and except a child's right to non-disclosure of juvenile court records as provided in Article 11 of these rules.

(2) When the party is an adult, the court may permit waiver if the court is satisfied that the party has been fully informed of, and intelligently waives, the right.

(3) When the party is a child, the court may permit waiver, provided that:

(a) if the child is not 14 years of age, the court is satisfied that the child's parent has been fully informed of, and intelligently waives, such right on the child's behalf; or

(b) if the child is 14 years of age or older, the court is satisfied that both the child and his parent have been fully informed of, and intelligently waive, the child's right.

**Rule 1-6. Referees; Appointment**

One or more referees may be appointed by the judge of the juvenile court in the manner, for the purposes, and with the powers, set forth in MSA § 260.031. The judge shall not appoint as referee any person who has contemporaneous responsibility for working with, or supervising the behavior of, children who are subject to dispositional orders of the appointing court or any other juvenile court.

**ARTICLE 2. BASIC RIGHTS**

**Rule 2-1. Right to Counsel**

(1) Each party to a juvenile court cause shall have the right to be represented by counsel at any and all stages of the cause. If the party is a child, his right to counsel shall arise the moment he is taken into custody by a representative of the state and shall include the right of the child to consult with counsel at reasonable times while he is in custody or in detention.

(2) If a party other than a child who is the subject of the cause or his parent cannot afford to retain counsel, such party shall have the right to representation by counsel appointed by the court at county expense.

(3) If the parent of a child who is the subject of the cause cannot afford to retain counsel:

(a) the parent and the child shall be entitled to representation by counsel appointed by the court at county expense; and

(b) if the interests of the parent and the child, considered in the context of the cause, do not appear to the court to conflict, their right to appointed counsel shall be to single counsel to represent both parties. If such interests do appear to

the court to conflict, the right of the parent and the child to appointed counsel shall be to separate counsel to represent each party.

(4) If the parent of a child who is the subject of the cause can afford to retain counsel, but the interests of the parent and the child, considered in the context of the cause, appear to the court to conflict, the child shall have a right to separate counsel appointed by the court, and the court may order that service of such counsel shall be at the parent's expense.

(5) For purposes of this rule, the interests of a child and his parent shall be deemed to conflict in a neglect or dependency or termination-of-parental-rights cause.

(6) Whenever these rules require that a party be given notice of his right to counsel and whenever a representative of the state notifies a party of his right to counsel, such notice shall explain to the party his rights as set forth in Rules 2-1(1) and 2-1(2) or 2-1(3)(a), as the case may be.

**Rule 2-2. Right to Remain Silent**

(1) A child who is the subject of a delinquency or traffic offender cause shall have the right to remain silent at any and all stages of the proceedings prior to the entry of an order adjudicating him delinquent or a traffic offender or noting that he has admitted the allegations of the petition. The child's right to remain silent shall arise the moment he is taken into custody by a representative of the state and shall include any period during which he is held in custody or in detention. The right to remain silent shall include the right of the child in custody not to be interrogated by a representative of the state except in the presence of at least one of his parents and the right of the child to be informed, in the presence of at least one of his parents:

- (a) that the child has a right to remain silent; and
- (b) that any statement made by the child might be used in a juvenile court cause against him or his parent; and
- (c) of the child's right to counsel as set forth in Rules 2-1(1) and 2-3(1)(a); and
- (d) that the child has a right to consult with counsel prior to the making of any statement.

(2) Out-of-court statements of a child who is the subject of a delinquency or traffic offender cause obtained by a representative of the state in violation of the child's right to remain silent as set forth in Rule 2-2(1) and any evidentiary fruits of such statements shall not be admissible at the adjudicatory hearing in the cause.

(3) Statements tending to support the allegations of the petition and made by the child who is the subject of the cause in connection with any other juvenile court cause shall not be admissible in evidence at the adjudicatory hearing unless the child shall introduce in evidence statements from the other cause which tend to disprove the allegations of the petition.

(4) Whenever these rules require that notice be given of a child's right to remain silent and whenever a state representative gives notice of a child's right to remain silent, such notice shall explain the right as set forth in Rule 2-2(1).

**Rule 2-3. Other Basic Rights**

- (1) In all juvenile court causes, a party shall have the right:
- (a) to introduce evidence and otherwise be heard on his own behalf; and
  - (b) to cross-examine witnesses testifying against him; and
  - (c) to inspect any report filed with the court, and if it is admitted in evidence to cross-examine the preparer of such report; and
  - (d) to obtain a transcript of the record of proceedings; and
  - (e) to appeal decisions of the juvenile court in accordance with MSA § 260.291; and
  - (f) to have subpoenas issued by the court requiring the attendance and testimony of witnesses or the production of papers at any juvenile court hearing, at the requesting party's expense, unless such party shall make a satisfactory

showing to the court of financial inability to bear the expense, in which case the subpoenas shall be issued at county expense.

(2) Whenever these rules require that a party be given notice of his "other basic rights" and whenever a representative of the state gives notice to a party of his other basic rights, such notice shall explain those rights as set forth in Rule 2-3(1).

**ARTICLE 3. PETITION**

**Rule 3-1. Intake**

(1) Every petition filed with the juvenile court, except a certificate transferring a cause from another court pursuant to MSA § 260.115 and a notice to appear filed in connection with a juvenile traffic offense pursuant to MSA § 260.193(2), shall be:

(a) drafted by the county attorney upon a showing to him of reasonable grounds to support the petition, and

(b) filed by the person who has knowledge of the facts alleged and who shall have verified the same pursuant to MSA § 260.131(2).

(2) If the juvenile court orders the filing of a new petition in a cause transferred from another court pursuant to MSA § 260.115, such petition shall be prepared and filed in accordance with these rules and MSA § 260.131.

**Rule 3-2. Contents of Delinquency Petitions**

(1) Every petition filed with the juvenile court in a delinquency cause shall conform to the requirements of MSA § 260.131, shall contain a statement that the child is delinquent, and:

(a) if the charge of delinquency is based on violation of a state or local law or ordinance (pursuant to MSA § 260.015(5)(a)), or violation of a federal law or a law of another state (pursuant to MSA § 260.015(5)(b)), the petition shall contain:

(i) a citation to the subdivision of MSA § 260.015(5) on which the petition is based, together with a recitation of the relevant portion of such subdivision; and

(ii) a citation to, or a recitation of, the law or ordinance allegedly violated; and

(iii) a clear and particularized statement of the facts on which the petitioner relies for the assertion that the child has violated the law or ordinance, including the time and place of alleged violation.

(b) if the charge of delinquency is based on MSA § 260.015(5)(c), (d) or (e), the petition shall contain:

(i) a citation to the subdivision of MSA § 260.015(5) on which the petition is based, together with a recitation of the relevant portion of such subdivision; and

(ii) a clear and particularized statement of the facts on which the petitioner relies for the assertion that the child is delinquent within the meaning of the portion of the subdivision of MSA § 260.015(5) on which the petition is based.

(2) If the child who is the subject of a delinquency petition is held in detention at the time the petition is filed, the petition may contain a statement that the child is held in detention, and if so, it shall recite the location of the detention facility, the time the child was taken into custody and the time he was delivered to the detention facility. If the petitioner believes that the immediate welfare of the child or the protection of the community requires that the child continue to be held in detention, the petition may contain a statement of such belief, the reasons for such belief and a recital of facts supporting such reasons.

(3) If the child who is the subject of a delinquency petition is not held in detention at the time the petition is filed and if the petitioner believes that the immediate welfare of the child or the protection of the community requires that the

child be taken into custody, the petition may contain a statement of such belief, the reasons for such belief and a recital of facts supporting such reasons.

**Rule 3-3. Contents of Neglect Petitions**

(1) Every petition filed with the juvenile court in a neglect cause shall conform to the requirements of MSA § 260.131, shall contain a statement that the child is neglected, and:

(a) if the charge of neglect is based on MSA § 260.015(10) (a), (b), (c), (d), (e) or (g), the petition shall contain:

(i) a citation to the subdivision of MSA § 260.015(10) on which the petition is based, together with a recitation of the relevant portion of such subdivision; and

(ii) a clear and particularized statement of the facts on which the petitioner relies for the assertion that the child is neglected within the meaning of the portion of the subdivision of MSA § 260.015(10) on which the petition is based.

(b) if the charge of neglect is based on MSA § 260.015(10)(f), the petition shall contain:

(i) a citation to MSA § 260.015(10)(f); and

(ii) a statement that the child is living in a facility for foster care which is not licensed as required by law and without court order; and

(iii) the name of the person or persons operating such foster care facility and its address.

(c) if the charge of neglect is based on MSA § 260.015(10)(h), the petition shall contain:

(i) a citation to MSA § 260.015(10)(h); and

(ii) the statements required by the relevant section of Rule 3-2 (Contents of Delinquency Petitions), except for the statement charging that the child is delinquent; and

(iii) a clear and particularized statement of the facts on which the petitioner relies for the assertion that what would otherwise be the child's delinquency results in whole or in part from parental neglect.

(2) The provisions of Rules 3-2(2) and 3-2(3) shall also apply to the contents of a neglect petition.

**Rule 3-4. Contents of Dependency Petitions**

(1) Every petition filed with the juvenile court in a dependency cause shall conform to the requirements of MSA § 260.131, shall contain a statement that the child is dependent, and:

(a) if the petition charges dependency based on MSA § 260.015(6)(a), the petition shall contain:

(i) a citation to MSA § 260.015(6)(a); and

(ii) a statement that the child is without a parent, guardian or other custodian.

(b) if the petition charges dependency based on MSA § 260.015(6)(b), the petition shall contain:

(i) a citation to MSA § 260.015(6)(b); and

(ii) a statement that the child is in need of special care and treatment required by his physical or mental condition, as the case may be, and that his parent, guardian or other custodian is unable to provide it; and

(iii) a clear particularized statement of the facts on which the petitioner relies for the assertion that the child is in need of special care and treatment, including the nature of the condition giving rise to such need, and the assertion that the child's parent, guardian or other custodian is unable to provide such care and treatment.

(c) if the petition charges dependency based on MSA § 260.015(6)(c), the petition shall contain:

- (i) a citation to MSA § 260.015(6)(c); and
  - (ii) a statement that the child's parent, guardian or other custodian for good cause desires to be relieved of the child's care and custody; and
  - (iii) a clear and particularized statement of the facts upon which the parent, guardian or other custodian relies for the assertion of good cause to be relieved of the obligations of care and custody.
- (d) if the petition charges dependency based on MSA § 260.015(6)(d), the petition shall contain:
- (i) a citation to MSA § 260.015(6)(d); and
  - (ii) a statement that the child is without proper parental care because of the emotional or mental or physical disability or state of immaturity, as the case may be, of his parent, guardian or other custodian; and
  - (iii) a clear and particularized statement of the facts upon which the petitioner relies for the assertion that the child is without proper parental care and for the assertion that such lack of care results from the emotional or mental or physical disability or state of immaturity, as the case may be, of his parent, guardian or other custodian.
- (2) The provisions of Rule 3-2(2) and 3-2(3) shall also apply to the contents of a dependency petition.

#### **Rule 3-5. Contents of Termination-of-Parental-Rights Petitions**

- (1) Every petition filed with the juvenile court in a termination-of-parental-rights cause shall conform to the requirements of MSA §§ 260.231(1), .131(2) and .131(3). In addition the petition shall contain:
- (a) a statement that parental rights should be terminated; and
  - (b) a citation to the relevant subdivision of MSA § 260.221 on which the petition is based, together with a recitation of the relevant portion of such subdivision; and
  - (c) a clear and particularized statement of the facts upon which the parents rely for their assertion that good cause exists for termination of parental rights, if the petition is based on MSA § 260.221(a), or a clear and particularized statement of the facts upon which the petitioner relies for the assertion that one or more of the conditions set forth in MSA § 260.221(b) exists, if the petition is based on a subdivision of MSA §260.221(b).
- (2) The provisions of Rules 3-2(2) and 3-2(3) shall also apply to the contents of a termination-of-parental-rights petition.

#### **Rule 3-6. Amendment of Petition**

- (1) A delinquency petition or a notice to appear in a traffic offender cause may be amended by order of the court at any time:
- (a) prior to the introduction of evidence at the adjudicatory hearing without consent of the parties to the cause; or
  - (b) subsequent to the introduction of evidence at the adjudicatory hearing with consent of all the parties to the cause.
- (2) A neglect or dependency or termination-of-parental-rights petition may be amended by order of the court at any time:
- (a) prior to entry of an adjudicatory order, without consent of the parties to the cause; or
  - (b) subsequent to the entry of an adjudicatory order, with consent of all parties to the cause.
- (3) If the court orders amendment of a petition or notice to appear, it shall grant the parties such additional time to prepare for further proceedings in the cause as may be required to insure a full and fair hearing.

## ARTICLE 4. SUMMONS AND NOTICE

### Rule 4-1. Issuance of Summons and Initial Notice; Recipients

(1) Upon the filing of a delinquency or dependency or neglect petition, the court shall:

(a) dismiss the petition if it fails on its face to disclose a jurisdictional basis for the cause; or

(b) promptly fix a time for an adjudicatory hearing. Unless the court elects to use the notice-in-lieu-of-summons procedure authorized by Rule 4-3, the court shall promptly cause the issuance of a summons and, if applicable, an initial notice, to the persons specified in MSA § 260.135(1) and (2), respectively, except that the summons shall be directed to, and shall be served upon, the child as well as the person who has custody or control of the child at the time of issuance of the summons. The summons and initial notice, if any, shall be served in the manner provided in MSA § 260.141.

(2) Upon the filing of a termination-of-parental-rights petition, the court shall:

(a) dismiss the petition if it fails on its face to disclose a jurisdictional basis for the cause; or

(b) promptly fix a time for an adjudicatory hearing; and

(c) promptly cause an initial notice of hearing to be issued and served on the parents, as provided in MSA § 260.231(3), and on the child.

(3) Upon the filing of a notice to appear in a traffic offender cause, the court shall:

(a) dismiss the notice if it fails on its face to disclose a jurisdictional basis for the cause; or

(b) promptly fix a time for an adjudicatory hearing. Unless the court elects to use the notice-in-lieu-of-summons procedure authorized by Rule 4-3, it shall then cause the issuance and service of a summons and, if applicable, an initial notice, upon the persons and in the manner provided in MSA § 260.193(2), except that the summons shall be directed to, and shall be served upon, the child as well as the person who has custody or control of the child at the time of issuance of the summons.

### Rule 4-2. Contents of Summons and Initial Notice

The summons served in a juvenile court cause shall require the persons to whom it is directed to appear at the adjudicatory hearing. The summons and any initial notice shall have a copy of the petition attached thereto. The summons and any initial notice shall contain:

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

(b) a statement describing the purpose of the adjudicatory hearing and the possible consequences thereof; and

(c) if the court has decided to consider reference of the cause for prosecution, a statement that the court will consider the desirability of referring the cause for prosecution, a recitation of the reasons for consideration of reference, and a statement that in the event the court concludes not to refer the cause it may proceed with the adjudicatory hearing.

(d) a statement of rights, explaining the right to counsel, the right to remain silent and other basic rights, as set forth in Rules 2-1, 2-2 and 2-3, respectively. In addition, the statement of rights shall inform the recipient of the summons or notice that:

(i) if he desires to retain an attorney, he should do so immediately, in order that he may be ready at the hearing date; and

(ii) if he desires to be represented by an attorney but cannot afford the cost, he should immediately notify the court that he wants a court-appointed attorney; and

(e) such other matters as the court may deem appropriate.

**Rule 4-3. Notice-in-Lieu-of-Summons**

In delinquency or neglect or dependency or traffic offender causes, the court, in its discretion, may cause the issuance of a notice-in-lieu-of-summons to the child and to the person who has custody or control of the child. Such notice-in-lieu-of-summons and any initial notice issued pursuant to Rule 4-1 may be delivered by mail, instead of by personal service, shall meet the requirements of Rule 4-2 and shall contain a statement that:

(a) the recipient is entitled by statute to have the summons (or notice, as the case may be) served upon him personally by personnel of the sheriff's office;

(b) personal service has been dispensed with for the convenience of the recipient;

(c) if the recipient appears in court for the hearing fixed in the notice, he shall be deemed to have waived issuance and personal service of a summons or personal service of a notice, as the case may be; and

(d) if he does not appear, a summons (or notice, as the case may be) will be served upon him personally by personnel of the sheriff's office.

**Rule 4-4. Time of Service**

A summons or initial notice served pursuant to Rule 4-1 and a notice-in-lieu-of-summons or an initial notice mailed pursuant to Rule 4-3 shall be delivered to the person to whom it is directed sufficiently in advance of the hearing to which it relates to afford such person a reasonable opportunity to prepare for the hearing. The hearing will not be held at the scheduled time if the summons or initial notice or notice-in-lieu-of-summons has not been delivered at least 72 hours before the time fixed for the hearing, or such later time as may be fixed by statute.

**Rule 4-5. Notice of Further Proceedings**

Notice of the time, date, place and purpose of any juvenile court hearing subsequent to the initial adjudicatory hearing shall be given to all parties, either in court or by mail or in such other manner as the court may direct.

**Rule 4-6. Summonses and Notices to Children**

Whenever these rules authorize or require a summons or notice to be given to a child and the child is less than 14 years of age, the summons or notice shall be given to his parent on the child's behalf.

**Rule 4-7. Copies of Notices to Attorney**

If a party to a juvenile court cause is represented by counsel who has entered an appearance pursuant to Rule 1-4(1), copies of all notices given to the party shall also be given to his counsel.

**Rule 4-8. Right to Attend Hearings**

Any person who is entitled to summons or notice under these rules or who is given summons or notice shall have the right to attend the hearing to which the summons or notice relates, subject to the discretion of the court to exclude a party from all or part of a hearing pursuant to MSA § 260.155(5).

**ARTICLE 5. ADJUDICATORY HEARINGS****Rule 5-1. Beginning Adjudicatory Hearing**

(1) All adjudicatory hearings before the juvenile court shall be conducted in accordance with MSA § 260.155. At the beginning of each such hearing, the court shall:

(a) verify the name, age and residence of the child who is the subject of the cause, and ascertain the relationship of the parties, each to the other; and

(b) ascertain whether all necessary parties are present and identify for those present all persons participating in the hearing; and

(c) ascertain whether notice requirements have been complied with, and if not, whether the affected parties intelligently waive compliance; and

(d) explain to the parties the purpose of the hearing and the possible consequences thereof; and

(e) explain to the parties the right to counsel, right to remain silent and other basic rights, as set forth in Rules 2-1, 2-2 and 2-3 respectively; and

(f) ascertain whether the parties before the court are represented by counsel.

(2) If a party before the court is not represented by counsel, the court shall ascertain whether the party understands his right to counsel. If the party wishes to retain counsel, the court shall continue the hearing a reasonable time to allow the party to obtain and consult with counsel of his choosing. If the party wishes counsel and makes a satisfactory showing to the court of financial inability to retain counsel, the court shall appoint counsel to represent such party and shall continue the hearing a reasonable time to allow the party to consult with his appointed counsel.

(3) If in the light of the standards set forth in Article 9 of these rules the court deems it appropriate to appoint a guardian ad litem for the child who is the subject of the cause, it shall do so, in the manner provided in Article 9. Upon appointment, it shall continue the hearing a reasonable time to allow the guardian ad litem to familiarize himself with the matter, consult with counsel (if the guardian is not acting as counsel) and generally prepare himself for participation in the cause.

(4) If in response to an inquiry by the court under Rule 5-2(1)(a) the child does not admit the allegations of the petition in a delinquency or traffic offender cause, or if for any other reason the court deems continuance appropriate, it may continue the adjudicatory hearing a reasonable time to allow for a full and fair preparation of the cause.

#### **Rule 5-2. Presentation of Evidence; Argument**

(1) Evidence in support of the petition shall be presented by the county attorney. Neither the court nor any member of the court staff shall participate in presentation of evidence in support of the petition, except that:

(a) the court may inquire of the child in a delinquency or traffic offender cause whether he admits the jurisdictional allegations of the petition, and if he does, the court may proceed directly to the entry of an adjudicatory order;

(b) the court may ask questions of witnesses or counsel when evidence admitted is unclear in some essential respect; and

(c) members of the court staff may appear as witnesses in the cause.

(2) The parties shall have the right to cross-examine witnesses produced by the county attorney, and to introduce evidence contesting the allegations of the petition.

(3) At the conclusion of the introduction of all the evidence, the court shall give the parties an opportunity to present oral argument. The county attorney shall present his argument first and the other parties shall follow in such order as they shall agree, or if they cannot agree, in such order as the court shall direct.

#### **Rule 5-3. Evidence Admissible**

(1) In arriving at its adjudicatory decision, the court shall consider only data which has been formally admitted in evidence. All testimony shall be under oath and may be in narrative form. No evidence that would be inadmissible in a civil proceeding shall be admitted. The admissibility of statements of a party to the cause and any evidentiary fruits thereof shall be governed by the provisions of Rules 2-2(2) and 2-2(3). An out-of-court admission by the child which meets the standards of admissibility set forth in Rule 2-2(2), although admissible in evidence, shall be insufficient to

support an adjudication that the child is delinquent or a traffic offender unless the admission is corroborated in whole or in part by other competent evidence.

(2) The admissibility of the results of a social study, medical examination, traffic offense study or reference study shall be governed by the provisions of Rules 10-1(3), 10-2(3), 10-3(3) and 10-4(3), respectively.

**Rule 5-4. Adjudication of Status, Standard of Proof and Findings in Delinquency Causes**

(1) At the conclusion of the adjudicatory hearing in a delinquency cause, the court shall enter an order in accordance with the following provisions:

(a) If the court is not satisfied that the delinquency has been proved beyond a reasonable doubt (by admission of the allegations or otherwise), it shall enter an order dismissing the petition.

(b) If the court is satisfied that the delinquency has been proved beyond a reasonable doubt (by admission of the allegations or otherwise), it shall enter an order either:

(i) adjudicating the child delinquent, fixing a time for a dispositional hearing to be held in accordance with Article 6 of these rules, and, where appropriate, providing for disposition of the child pending the dispositional hearing; or

(ii) noting that the allegations of the petition have been proved (by admission of the allegations or otherwise), fixing a time for a dispositional hearing to be held in accordance with Article 6 of these rules, and, where appropriate, providing for disposition of the child pending the dispositional hearing; and

(aa) if at the conclusion of the dispositional hearing the court decides not to order an interim disposition without adjudication of delinquency, pursuant to MSA § 260.185(3), it shall enter a superseding adjudicatory order adjudicating the child delinquent; or

(bb) if at the conclusion of the dispositional hearing the court decides to order an interim disposition without adjudication of delinquency, pursuant to MSA § 260.185(3), it shall allow its original adjudicatory order to stand pending expiration of the interim disposition period. If at the conclusion of the interim disposition period, or prior thereto, the court decides that further supervision of the child is unnecessary, it shall enter an order dismissing the cause. If at the conclusion of the interim disposition period, or prior thereto, the court decides that further supervision of the child is necessary, it shall enter an order superseding its original adjudicatory order and adjudicating the child delinquent.

(2) The court shall include in its adjudicatory order, or in a separate document, findings of fact upon which it relies for the adjudication embodied in the order.

**Rule 5-5. Adjudication of Status, Standard of Proof and Findings in Neglect and Dependency Causes**

(1) At the conclusion of the adjudicatory hearing in a neglect or dependency cause, the court shall enter an order in accordance with the following provisions:

(a) If the court is not satisfied that the neglect or dependency has been proved by clear and convincing evidence (by admission of the allegations or otherwise), it shall enter an order dismissing the petition.

(b) If the court is satisfied that the neglect or dependency has been proved by clear and convincing evidence (by admission of the allegations or otherwise), it shall enter an order either:

(i) adjudicating the child neglected or dependent, fixing a time for a dispositional hearing to be held in accordance with Article 6 of these rules, and, where appropriate, providing for disposition of the child pending the dispositional hearing; or

(ii) noting that the allegations of the petition have been proved (by admission of the allegations or otherwise), fixing a time for a dispositional hearing to be held in accordance with Article 6 of these rules, and, where appropriate, providing for disposition of the child pending the dispositional hearing; and

(aa) if at the conclusion of the dispositional hearing the court decides not to order an interim disposition without adjudication of neglect or dependency, pursuant to MSA § 260.191(4), it shall enter a superseding adjudicatory order adjudicating the child neglected or dependent; or

(bb) if at the conclusion of the dispositional hearing the court decides to order an interim disposition without adjudication of neglect or dependency, pursuant to MSA § 260.191(4), it shall allow its original adjudicatory order to stand pending expiration of the interim disposition period. If at the conclusion of the interim disposition period, or prior thereto, the court decides that further supervision of the child is unnecessary, it shall enter an order dismissing the cause. If at the conclusion of the interim disposition period, or prior thereto, the court decides that further supervision of the child is necessary, it shall enter an order superseding its original adjudicatory order and adjudicating the child neglected or dependent.

(2) The court shall include in its adjudicatory order, or in a separate document, findings of fact upon which it relies for the adjudication embodied in the order.

**Rule 5-6. Adjudication of Status, Standard of Proof and Findings in Traffic Offender Causes**

(1) At the conclusion of the adjudicatory hearing in a traffic offender cause, the court shall enter an order in accordance with the following provisions:

(a) If the court is not satisfied that commission of the traffic offense has been proved beyond a reasonable doubt (by admission of the allegations or otherwise), it shall enter an order dismissing the petition.

(b) If the court is satisfied that the commission of the traffic offense has been proved, beyond a reasonable doubt (by admission of the allegations or otherwise), it shall enter an order adjudicating the child a traffic offender, fixing a time for a dispositional hearing, and, where appropriate, providing for disposition of the child pending the dispositional hearing.

(2) The court shall include in its adjudicatory order, or in a separate document, findings of fact upon which it relies for the adjudication embodied in the order.

**Rule 5-7. Adjudication of Status, Standard of Proof and Findings in Termination-of-Parental-Rights Causes**

(1) At the conclusion of the adjudicatory hearing in a termination-of-parental-rights cause, the court shall enter an order in accordance with the following provisions:

(a) If the court is not satisfied that it has been proved by clear and convincing evidence (by admission of the allegations or otherwise) that there is a sufficient basis for termination of parental rights or that the child is neglected or dependent, it shall enter an order dismissing the petition.

(b) If the court is not satisfied that a sufficient basis for termination of parental rights has been proved by clear and convincing evidence (by admission of the allegations or otherwise), or if it considers termination of parental rights to be inappropriate, and if the court is satisfied that it has been proved by clear and convincing evidence that the child is neglected or dependent, it may enter an order pursuant to Rule 5-5(b).

(c) If the court is satisfied that a sufficient basis for termination of parental rights has been proved by clear and convincing evidence (by admission of the allegations or otherwise), and the court considers termination to be appropriate,

it shall enter an order terminating parental rights. If the court terminates the parental rights of both parents, or of the mother if the child is illegitimate, or of the only living parent, the court shall include in its adjudicatory order an order transferring guardianship and legal custody of the child pursuant to MSA § 260.241.

(2) If the court terminates parental rights, it shall set forth in a document separate from the adjudicatory order findings of fact upon which it relies for the adjudication embodied in the order. If the court does not terminate parental rights, but does enter an adjudicatory order based on neglect or dependency, pursuant to Rule 5-5(b), it shall include in its adjudicatory order, or in a separate document, findings of fact upon which it relies for the adjudication embodied in the order.

## ARTICLE 6. DISPOSITIONAL HEARINGS

### Rule 6-1. Separate from Adjudicatory Hearing

A dispositional hearing shall be separate and distinct from the adjudicatory hearing to which it relates. It may be held, however, immediately following the adjudicatory hearing if the court concludes that under the circumstances a continuance to allow the parties to prepare for their participation in the proceeding is unnecessary.

### Rule 6-2. Social History; Medical Examination

(1) Prior to the holding of a dispositional hearing:

(a) the court shall order a social study pursuant to Rule 10-1, unless for special reasons in a particular case the court concludes that such a study is unnecessary; and

(b) the court may order medical examinations pursuant to Rule 10-2.

(2) Upon receipt of the social study report and any medical reports, the court shall notify each unrepresented party and counsel for each represented party and make the reports available for inspection, in accordance with the provisions of Rule 10-5(1).

### Rule 6-3. Beginning Dispositional Hearing

All dispositional hearings before the juvenile court shall be conducted in accordance with MSA § 260.155. At the beginning of each such hearing, the court shall comply with the provisions of Rule 5-1, unless the dispositional hearing is held immediately following the adjudicatory hearing.

### Rule 6-4. Presentation of Evidence; Argument

(1) Presentation of evidence at a dispositional hearing shall be made initially by a probation officer or the county attorney or such other person as the court shall designate. The court may ask questions of the witnesses. The parties shall have the right to cross-examine witnesses produced by the court's designee, and to introduce their own evidence.

(2) At the conclusion of the introduction of all the evidence, the court shall give the parties an opportunity to present argument as to the most appropriate disposition of the cause. The court's designee who has made the initial presentation of evidence shall argue first, and the parties shall follow in such order as they shall agree, or if they cannot agree, in such order as the court shall direct.

### Rule 6-5. Evidence Admissible

In arriving at its dispositional decision, the court shall consider only data which has been formally admitted in evidence. All testimony shall be under oath and may be in narrative form. The court may admit any evidence that is material and relevant

to disposition of the cause, including hearsay and opinion evidence. The parties shall have the right to examine any person who has prepared any report admitted in evidence.

**Rule 6-6. Dispositional Order; Entry**

At the conclusion of the dispositional hearing, or at such subsequent date that the court shall fix for the purpose, the court shall enter a dispositional order in accordance with the provisions of MSA §§ 260.185 (delinquent child) or .191 (neglected or dependent child) or .193 (traffic offender) or .241 (termination of rights), as the case may be. The court shall include in such order, or in a separate document, findings which set forth the reasons why the court decided on the particular disposition embodied in its order, and the facts upon which such reasons were based.

**Rule 6-7. Dispositional Orders; Review**

(1) All dispositional orders which place a child under court-directed supervision pursuant to MSA §§ 260.185(1)(b) or .185(1)(c)(delinquent child) or §§ 260.191(1)(a) or .191(1)(b)(neglected or dependent child) shall be reviewed periodically by the court in accordance with the provisions of this rule.

(2) In delinquency causes:

(a) if the original disposition places the child on probation, pursuant to MSA § 260.185(1)(b), the court shall review the order at least once prior to its expiration date if it is for a fixed period of less than one year or at least annually prior to the anniversary date of the original disposition order if that order was for an indeterminate period or for a fixed period longer than one year; and

(b) if the original disposition order transfers custody of the child to a person specified in MSA § 260.185(1)(c), the court shall review the order at least once prior to its expiration date if it is for a period less than one year, or at least annually prior to the anniversary date of the disposition order if it is for a period more than one year.

(3) In neglect or dependency causes if the original disposition order places the child under protective supervision pursuant to MSA § 260.191(1)(a) or transfers legal custody pursuant to MSA § 260.191(1)(b) the court shall review the order at least once prior to its expiration date.

(4) After reviewing a dispositional order pursuant to this Rule 6-7, the court may order any disposition which it considers appropriate under the circumstances and which it could have ordered under the Minnesota Juvenile Court Act and these rules at the original dispositional hearing: provided, however, that the court may not increase the severity of the disposition, as, for example, changing from probation to a transfer of custody of the child, or requiring harsher conditions of probation, except pursuant to a hearing held in accordance with Article 5 of these rules. Such hearing shall be held pursuant to summons and, if applicable, notice, which complies with Article 4 of these rules. The review proceeding shall be initiated by the filing of a petition which complies with Article 3 of these rules, except that if the basis for review is an alleged violation of the court's original dispositional order, the petition shall include a statement of the conditions of the order, the alleged violation and the facts which the petitioner relies upon for the assertion that the conditions of the order have been violated.

**ARTICLE 7. DETENTION**

**Rule 7-1. Placing the Child in Detention**

(1) If a person takes a child into custody pursuant to MSA § 260.165, he shall immediately notify the child's parent that the child is in custody. Except where the

immediate welfare of the child or the protection of the community requires that the child be placed in detention, the person who has taken custody of the child shall release the child, in accordance with the provisions of MSA § 260.171(1), to the custody of his parent or other suitable person on the promise of such person to bring the child to court, if necessary, at such time as the court may direct.

(2) If the person who has taken a child into custody concludes that the immediate welfare of the child or the protection of the community requires that the child be placed in detention, he shall advise the child and the child's parent, if available:

(a) of the reasons why the child has been taken into custody and why he is being placed in detention; and

(b) of the location of the detention facility; and

(c) of the child's right to counsel as set forth in Rule 2-1 and his right to remain silent as set forth in Rule 2-2; and

(d) that the parent and an attorney may make an initial visit to the detention facility at any time and subsequent visits on a reasonable basis during visiting hours; and

(e) that the child may telephone his parent and an attorney from the detention facility immediately after being admitted to detention and thereafter on a reasonable basis; and

(f) that the child or his parent has the right to apply to the court during the first 48 hours of detention (excluding Saturdays, Sundays and holidays) for the child's immediate release; and

(g) that the child may not be held at the detention facility longer than 24 hours (excluding Saturdays, Sundays and holidays) unless a detention order is signed by the court; and

(h) that the child may not be held at the detention facility longer than 48 hours (excluding Saturdays, Sundays and holidays) unless a petition has been filed within that time and the court orders that the child continue to be held in detention pending the holding of a detention hearing.

(3) The person who has taken the child into custody and who has concluded, as aforesaid, that the child should be placed in detention, shall promptly take the child to a detention facility, delivering to the court and the supervisor of the detention facility a signed report, setting forth:

(a) the time the child was taken into custody; and

(b) the time the child was delivered to the detention facility; and

(c) the reasons why the child was taken into custody; and

(d) the reasons why the child has been placed in detention; and

(e) a statement that the child and his parent have received the notifications required by Rule 7-1(2) or the reasons why they have not been so notified.

(4) When a child has been delivered to a detention facility, the supervisor of the detention facility shall deliver to the court a signed report acknowledging receipt of the child. The supervisor of the detention facility shall ascertain from the report of the person who has taken the child into custody whether the child and his parent have received the notifications required by Rule 7-1(2). If the child or his parent or both have not been so notified, the supervisor of the facility shall immediately make the notifications, and shall include in his report to the court a statement that the child and his parent have received the notifications or the reasons why they have not been so notified.

#### **Rule 7-2. Release from Detention During First 48 Hours**

(1) A child who has been placed in detention or his parent shall have the right to apply to the court at any time during the first 48 hours of the detention, excluding Saturdays, Sundays and holidays for the child's immediate release. Such application may be made by telephone. If such an application is made, the court shall hold a summary detention hearing on notice to the child, the parent, the supervisor of the

detention facility and the person who took the child into custody. At the conclusion of the summary detention hearing the court shall enter an order directing the supervisor of the detention facility:

(a) to release the child immediately to the custody of his parent or other suitable person; or

(b) to so release the child 48 hours, excluding Saturdays, Sundays and holidays, after the time he was placed in detention, unless within such period the supervisor shall receive a court order noting that a petition has been filed and directing further detention pending a formal detention hearing; or

(c) if a petition has already been filed in the cause and the court has decided not to order the immediate release of the child pursuant to Rule 7-2(1)(a), to continue holding the child in detention pending a formal detention hearing.

Copies of the aforesaid order shall be delivered to the child, his parent and the supervisor of the detention facility.

(2) If neither the child nor his parent requests the court for a detention hearing during the first 24 hours of the child's detention, excluding Saturdays, Sundays and holidays, the person who took the child into custody or the supervisor of the detention facility may apply to the court during such period for the continued detention of the child. Such application may be made by telephone. The court need not hold a hearing on such application. After receiving such an application, the court shall enter an order in compliance with Rule 7-2(1)(a) or (b) or (c), and cause copies thereof to be delivered to the child, his parent and the supervisor of the detention facility.

(3) If during the first 24 hours of the child's detention, excluding Saturdays, Sundays and holidays, the supervisor of the detention facility does not receive a continued detention order entered by the court pursuant to Rule 7-2(1)(b) or (c) or Rule 7-2(2), he shall release the child at the end of such period to the custody of his parent or other suitable person.

### **Rule 7-3. Release from Detention After First 48 Hours**

(1) If a petition is filed with the court within 48 hours, excluding Saturdays, Sundays and holidays, after a child has been placed in detention and if the child is in detention at the time of filing of the petition and if the petition or a separately filed affidavit requests continued detention, the court shall immediately:

(a) Notify the supervisor of the detention facility by order that a petition has been filed and that the child is to remain in custody pending a formal detention hearing. Such order may be communicated to the supervisor by telephone, provided a conformatory written order is subsequently delivered; and

(b) schedule the detention hearing and give notice thereof to the child, his parent, the person who took the child into custody, the supervisor of the detention facility and the county attorney. Such notice shall state the time, place and purpose of the detention hearing and the reasons why the child has been placed in detention. The detention hearing shall be held not later than 48 hours after filing of the petition or the court day next succeeding the date of filing, whichever shall be later.

(2) If a child is placed in detention after the filing of a petition and is not released during the first 48 hours of detention, the court shall schedule and give notice of a detention hearing as provided in Rule 7-3(1)(b), except that the hearing shall be held not later than 72 hours, excluding Saturdays, Sundays and holidays, after the child was placed in detention or the court day next succeeding the day the child was placed in detention, whichever shall be later.

(3) The detention hearing shall be conducted in accordance with MSA § 260.155. In addition:

(a) At the beginning of the hearing, the court shall comply with the provisions of Rule 5-1.

(b) Presentation of evidence shall be made initially by the county attorney, and the parties shall have the right to cross-examine witnesses produced by others and to present evidence.

(c) In arriving at its detention decision, the court shall consider only data which has been formally admitted in evidence. All testimony shall be under oath and may be in narrative form. The court may admit any evidence material and relevant to the necessity for detaining the child, including hearsay and opinion evidence. The parties shall have the right to examine any person who prepared any report admitted into evidence.

(d) At the conclusion of the introduction of all the evidence, the court shall give the parties an opportunity to present oral argument. The county attorney shall present his argument first and the other parties shall follow in such order as they shall agree, or if they cannot agree, in such order as the court shall direct.

(e) At the conclusion of the hearing, the court shall enter an order directing either the release of the child to the custody of his parent or other suitable person or his continued detention for a fixed period not to exceed 7 days from and including the date of the order. If the court orders continued detention, it shall include in its order the reasons for continued detention and findings of fact which support such reasons. Copies of the court's order shall be delivered to the parties, including the supervisor of the detention facility, who shall release the child or continue to hold him in detention, as the case may be, in accordance with the court's order.

#### **Rule 7-4. Additional Detention Hearings**

If a child held in detention under a court order entered pursuant to Rule 7-3(3)(e) has not been released prior to the expiration of the order, an additional hearing shall automatically be scheduled and held on the next court day following the expiration of the order. The child, his parent, the supervisor of the detention facility and the county attorney shall be notified of this hearing no less than 24 hours prior to the scheduled hearing. The conduct of the hearing shall be governed by, and shall be held in compliance with, the provisions of Rule 7-3(3).

#### **Rule 7-5. Telephoning and Visitation**

(1) A child may telephone his parent and attorney immediately after being admitted to a detention facility, and thereafter on a reasonable basis.

(2) Upon being admitted to a detention facility a child may be visited in private by his attorney and by his parent. After the initial visit, the child may be visited by his attorney and his parent on a reasonable basis during visiting hours.

#### **Rule 7-6. Release Report**

Whenever a child is released from detention, the supervisor of the detention facility shall file with the court a signed report containing the location of the detention facility, the name of the child, the date and time of release, the name and address of the person to whom the child was released and the reason for the release.

### **ARTICLE 8. REFERENCE FOR PROSECUTION**

#### **Rule 8-1. Initiation of Reference Proceedings**

(1) Proceedings to refer a delinquency cause for prosecution pursuant to MSA § 260.125 or to refer a traffic offender cause for prosecution pursuant to MSA § 260.193(4) may be initiated by application of the county attorney or by application of the child who is the subject of the cause or upon the court's own motion.

(2) The county attorney shall make his application for reference prior to commencement of the adjudicatory hearing, and shall either include his application in the petition or submit it by separate written motion. The child shall submit his

application for a reference by written motion subsequent to filing of the petition and prior to the introduction of evidence at the adjudicatory hearing. The county attorney or the child, as the case may be, shall include in his application an express request that the cause be referred for prosecution together with a statement setting forth reasons for the request. The county attorney shall also include in his application a statement of the facts supporting the reasons for his request.

(3) If there is reason to believe from the application for reference, or from whatever sources the court considers when it initiates reference proceedings on its own motion, that retention of jurisdiction by the juvenile court would be contrary to the best interests of the child or the public safety, the court shall enter an order fixing a time for a hearing on the matter, stating that reference of the proceedings for prosecution will be considered, and setting forth reasons for consideration of reference.

#### **Rule 8-2. Notice of Reference Hearing**

(1) If the summons and notice in connection with the adjudicatory hearing have not yet been issued and served, such summons and notice, the contents of which comply with the provisions of Rule 4-2, shall be issued and served as provided in Rule 4-1(1).

(2) If a summons and notice in connection with the adjudicatory hearing has already been issued and served, the court shall cause a copy of its order scheduling the reference hearing to be served on the same parties served with the summons and notice.

#### **Rule 8-3. Reference Investigation**

(1) Prior to the holding of a reference hearing, the court shall order a reference study pursuant to Rule 10-4, unless for special reasons in a particular case the court concludes that such a report is unnecessary.

(2) Upon receipt of the reference study report, the court shall notify each unrepresented party and counsel for each represented party and make the report available for inspection in accordance with the provisions of Rule 10-5(1).

#### **Rule 8-4. Beginning of Reference Hearing**

All reference hearings before the juvenile court shall be conducted in accordance with MSA § 260.155. At the beginning of each such hearing, the court shall comply with the provisions of Rule 5-1.

#### **Rule 8-5. Presentation of Evidence; Argument**

Presentation of evidence at the reference hearing and argument shall be made in accordance with the provisions of Rule 5-2.

#### **Rule 8-6. Evidence Admissible**

In arriving at its reference decision, the court shall consider only data which has been formally admitted in evidence. All testimony shall be under oath and may be in narrative form. The court may admit any evidence that is material and relevant to the decision whether to refer the cause for prosecution, including hearsay and opinion evidence. The parties shall have the right to examine any person who has prepared any report admitted in evidence.

#### **Rule 8-7. Reference Order**

(1) At the conclusion of the reference hearing, or at such subsequent date that the court shall fix for the purpose, the court shall enter an order in which it either directs:

(a) retention of jurisdiction by the juvenile court and proceeding with the adjudicatory hearing; or

(b) reference of the cause for prosecution as provided by MSA § 260.125 or § 260.193(4), as the case may be. If the court refers the cause for prosecution, it shall, by separate document, make findings which set forth the reasons why it decided to refer and the facts supporting those reasons.

(2) The court shall not refer a delinquency cause for prosecution pursuant to MSA § 260.125 unless it shall have concluded, from clear and convincing evidence introduced at the reference hearing, that the child is not suitable to treatment or that the public safety would not be served under the provisions of laws relating to juvenile courts. Criteria relevant to such conclusions include such matters as:

(a) the type of offense, including whether it demonstrated viciousness, or involved force or violence; and

(b) whether the offense is part of a repetitive pattern of offenses which indicates that the child may be beyond rehabilitation under the regular statutory juvenile procedures; and

(c) the record of the child; and

(d) the relative suitability of programs and facilities available to the juvenile and criminal courts.

(3) The court shall not refer a traffic offender cause for prosecution pursuant to MSA § 260.193(4) unless it shall have concluded, from clear and convincing evidence introduced at the reference hearing, that the welfare of the child or the public safety would be better served under the laws controlling adult traffic violators.

#### **Rule 8-8. Future Proceedings**

(1) If following a reference hearing the court concludes not to refer the cause for prosecution, it may immediately proceed to hold the adjudicatory hearing or may order the holding of such hearing at such subsequent date as it shall deem appropriate under the circumstances.

(2) If the cause is not referred for prosecution and the reference hearing was not held on motion of the child, the judge who conducted the reference hearing shall not preside at the adjudicatory hearing, if the child or his parent so requests. The judge shall advise the child and his parent at the conclusion of the reference hearing that they may request his non-participation in the adjudicatory hearing, and that if they do, arrangements will be made for another judge to preside at the adjudicatory hearing.

### **ARTICLE 9. GUARDIANS AD LITEM**

#### **Rule 9-1. Occasions for Appointment**

At any stage in the proceedings of a juvenile court cause—including any period during which a child is held in detention pending the filing of a petition—the court, on its own motion or upon application of a party, shall appoint a guardian ad litem for the child:

(a) if the child has no parent or guardian of his person, or if the parent or guardian of the person cannot be located or cannot be brought before the court; or

(b) if the parent or guardian of the person is excused from participation in all or any part of a juvenile court hearing, pursuant to MSA § 260.155(5); or

(c) if the parent is a minor or an incompetent; or

(d) if the parent is indifferent to the interests of the child or if the interests of the child and the parent, considered in the context of the cause, appear to conflict. For these purposes, the interests of a child and his parent shall be deemed to conflict in a neglect or dependency or termination-of-parental-rights cause and during any detention period prior to filing of a petition where it

appears that the petition to be filed will assert a neglect or dependency or termination-of-parental-rights cause; or

(e) in any other instance where the court deems appointment of a guardian ad litem to be in the best interests of the child.

**Rule 9-2. Method of Appointment**

The court shall make the appointment of a guardian ad litem by order and in such order shall:

(a) designate the nature and extent of the proceedings with respect to which the guardianship shall be effective; and

(b) designate the guardian ad litem a party to the cause.

**Rule 9-3. Duties and Rights**

A guardian ad litem shall have the duty to protect the interests of the child for whom he has been appointed guardian, and shall be deemed a parent within the meaning of these rules as to those proceedings with respect to which his guardianship extends.

**Rule 9-4. Qualifications**

Except in causes where there are special reasons why a particular layman would be the most appropriate guardian ad litem for the child, the court shall appoint an attorney as guardian ad litem. A guardian ad litem who is an attorney shall act as his own counsel and as counsel for the child, unless there are special reasons in a particular cause why the guardian or the child or both should have counsel in addition to the guardian. In such causes and in causes where the guardian ad litem appointed by the court is not an attorney, the guardian ad litem shall have the right to counsel, as set forth in Rule 2-1, except that the guardian shall be entitled to appointed counsel without regard to his financial ability to retain counsel. Whether such appointed counsel shall be provided at the cost of the county shall depend on the financial ability of the child's parent.

**Rule 9-5. Continuance of Pending Proceedings**

Upon appointment of a guardian ad litem, the court shall continue any pending proceeding a reasonable time to allow the guardian to familiarize himself with the matter, consult with counsel and prepare his participation in the cause.

**ARTICLE 10. INVESTIGATIONS AND REPORTS**

**Rule 10-1. Social Studies**

(1) A "social study," as used in these rules, is an investigation of the personal and family history and the environment of a child who is the subject of the cause. It may include a reference study, as defined in Rule 10-4(1), and a traffic offense study, as defined in Rule 10-3(1).

(2) The court may order a social study in any juvenile court cause at any time subsequent to the time that the party who is the subject of the cause admits the allegations of the petition, or if he does not admit, at any time subsequent to the time the court finds the allegations of the petition have been proved. For purposes of this rule, the child shall be deemed the subject of a delinquency or traffic offender cause and the parent shall be deemed the subject of a neglect, dependency or termination-of-parental-rights cause.

(3) The report of a social study shall not be admissible in evidence, nor shall it be considered by the court, at the adjudicatory hearing in any juvenile court cause. It shall be admissible in evidence at the dispositional hearing in any juvenile court cause.

**Rule 10-2. Medical Examinations**

(1) A "medical examination," as used in these rules, is an examination of a child who is the subject of a juvenile court cause or of his parent by a physician or psychiatrist or a psychologist.

(2) The court may order a medical examination in any juvenile court cause at any time subsequent to the time that the party who is the subject of the cause admits the allegations of the petition, or if he does not admit, at any time subsequent to the time the court finds the allegations of the petition have been proved. For purposes of this rule, the child shall be deemed the subject of a delinquency or traffic offender cause and the parent shall be deemed the subject of a neglect, dependency or termination-of-parental-rights cause. Whenever possible, a medical examination shall be conducted on an outpatient basis. A child held in detention shall be deemed an outpatient. A medical examination of a parent of the child who is the subject of the cause shall not be ordered unless the physical or mental ability of the parent to care for the child is a relevant issue in the particular cause and the parent to be examined consents to the examination.

(3) The report of a medical examination shall not be admissible in evidence, nor shall it be considered by the court, at the adjudicatory hearing in any juvenile court cause. It shall be admissible in evidence at the dispositional hearing in any juvenile court cause.

**Rule 10-3. Traffic Offense Study**

(1) A "traffic offense study," as used in these rules, is an investigation of the traffic offense record of the child who is the subject of a juvenile court cause.

(2) The court shall order a traffic offense study subsequent to the filing of the notice to appear in a traffic offender cause.

(3) The report of a traffic offense study shall not be admissible in evidence, nor shall it be considered by the court, at the adjudicatory hearing in a traffic offender cause. It shall be admissible in evidence at the dispositional hearing in a traffic offender cause. The admissibility in evidence of a traffic offense study which is part of a social study shall be governed by the provisions of Rule 10-1(3).

**Rule 10-4. Reference Study**

(1) A "reference study," as used in these rules, is an investigation of the juvenile court record of the child who is the subject of a delinquency cause and of the circumstances connected with any law violation which is the basis of the delinquency charge.

(2) The court may order a reference study at any time after filing of the petition in a delinquency cause.

(3) The report of a reference study shall not be admissible in evidence, nor shall it be considered by the court, at the adjudicatory hearing in a delinquency or a traffic offender cause. It shall be admissible in evidence at a hearing to consider reference for prosecution in a delinquency or traffic offender cause and at the adjudicatory hearing in neglect or dependency or termination-of-parental-rights causes and at the dispositional hearing in any juvenile court cause. The admissibility in evidence of a reference study which is part of a social study shall be governed by the provisions of Rule 10-1(3).

**Rule 10-5. Right of Parties to Inspect**

(1) The parties to a juvenile court cause shall have the right to inspection by their counsel of any report provided for by Article 10 of these rules which is filed with the court. If a party is not represented by counsel, he shall have the right to inspect the report himself. If the unrepresented party is a child or his parent and if the court deems it not in the best interests of the child for the child or the parent to see all or any part of a report, the court shall appoint counsel to represent the party and shall make the report available for inspection by such counsel.

- (2) The parties to a juvenile court cause shall have the right at any hearing in which a report provided for by Article 10 of these rules is admitted in evidence:
- (a) to confront and examine the person who has prepared the report; and
  - (b) to introduce evidence contesting or clarifying the data contained in the report.

## ARTICLE 11. JUVENILE RECORDS

### **Rule 11-1. Applicability; Juvenile Records Defined**

(1) The disclosure of juvenile records shall be governed by the provisions of MSA § 260.161 and Article 11 of these rules.

(2) For purposes of these rules, juvenile records means:

- (a) all documents filed with the court in a juvenile court cause; and
- (b) all documents, except traffic offense records, maintained by any representative of the state or state agency, except the Youth Conservation Commission, insofar as they relate to the apprehension, detention, adjudication or disposition of a child who is the subject of a juvenile court cause.

### **Rule 11-2. Disclosure**

(1) Juvenile records sealed pursuant to Rule 11-3 shall not be disclosed for any purpose to any person by the person maintaining them, including the juvenile court.

(2) Juvenile records not sealed pursuant to Rule 11-3 shall not be disclosed except pursuant to an order of the juvenile court specifying the person or persons to whom the records may be disclosed, the extent of the records which may be disclosed and the purpose of the disclosure. Such court orders for disclosure shall be limited to those instances where the court concludes that disclosure is required for the best interests of the child, the public safety or the functioning of the juvenile court system, and then only to the following persons:

- (a) a judge of the juvenile court and members of a juvenile court staff;
- (b) the parties to a juvenile court cause;
- (c) representatives of a state or private agency providing supervision or having custody of the child under order of the court; and

(d) any other person having a legitimate interest in the operation of the juvenile court or in the child who is the subject of the records, but this shall not include any present or prospective employer of the child or the military services. Persons having a legitimate interest in the operation of the juvenile court shall include responsible representatives of public information media and persons conducting research relating to the juvenile court, provided that such persons agree not to publicize the identity of the child who is the subject of the cause or the identity of the child's parents.

(3) The provisions of Rules 11-2(1) and 11-2(2) shall be deemed rights of the child who is the subject of the juvenile records and shall be rights which cannot be waived pursuant to Rule 1-5.

### **Rule 11-3. Sealing Juvenile Records**

(1) The court may, upon its own motion or upon application of a party to a juvenile court cause, order the sealing of the juvenile records pertaining to a delinquency cause, provided that the child who was the subject of the cause is no longer subject to an outstanding dispositional order of the court and is not subject to supervision of the Youth Conservation Commission.

(2) The court shall order the sealing of juvenile court records pertaining to a delinquency cause:

- (a) if the child who was the subject of the cause has attained 21 years of age;
- or

(b) if the court dismisses the cause for lack of jurisdiction or failure of proof;  
or

(c) if the court expunges an adjudication of delinquency in the cause.

(3) Whenever the court considers the sealing of juvenile court records pursuant to Rule 11-3(1), it may hold a hearing to determine whether there are proper grounds for the sealing of the records. Such hearing shall be held on notice to the parties to the cause, the county attorney and any persons maintaining juvenile records relating to the child. If the court decides that the records shall be sealed pursuant to Rule 11-3(1) or 11-3(2), it shall enter an order directing each of the persons maintaining such records to remove such records from their files, seal them, and store them in a place separately maintained for sealed juvenile records. The court order shall note that sealed juvenile records may not be used for any purpose, and shall require the persons to whom it is directed to file with the court a written statement acknowledging compliance with the court order. Copies of the court order shall be delivered to all persons maintaining juvenile records pertaining to the child.

(4) When juvenile court records are ordered sealed pursuant to this Rule 11-3, the court shall inform the parties to the cause which was the subject of the records that the proceedings are deemed never to have occurred and that the child who was the subject of the cause and any party to the cause may reply accordingly to any inquiry about the cause or the child who was the subject thereof. The court and any person who maintained juvenile records ordered sealed pursuant to this Rule 11-3 shall answer all subsequent inquiries about the cause or the child who was the subject thereof, from whatever source, with: "We have no record on the named individual," or some similar response.

**Rule 11-4. Physical Destruction of Juvenile Records**

The court, in its discretion, may order the destruction of any juvenile records sealed pursuant to Rule 11-3. Such an order shall be directed to all persons maintaining the records, shall order their physical destruction and shall require the persons to whom it is directed to file with the court a written statement acknowledging compliance with the court order.

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