

JUVENILE COURT

Minnesota Rules of Juvenile Procedure

	PAGE
Table of Headnotes	837
Text of Rules	851

Rule on Public Access to Records Relating to Open Juvenile Protection Proceedings

	PAGE
Table of Headnotes	984
Text of Rules	984



Minnesota Rules of Juvenile Procedure

Rules Effective May 1 1983

With amendments received through August 1 1998

TABLE OF HEADNOTES

Delinquency, Juvenile Petty Offenses and Juvenile Traffic Offenses

Rule 1 Scope, Application and General Purpose

- 1 01 Scope and Application
- 1 02 General Purpose

Rule 2 Attendance at Hearings and Privacy

- 2 01 Right to Attend Hearing
- 2 02 Exclusion of Persons Who Have a Right to Attend Hearings
- 2 03 Presence Required
 - 1 Child
 - 2 Counsel
 - 3 Parent, Legal Guardian or Legal Custodian
- 2 04 Right to Participate
 - 1 Child and Prosecuting Attorney
 - 2 Guardian Ad Litem
 - 3 Parent(s) Legal Guardian or Legal Custodian
 - 4 Generally
- 2 05 Ex-Parte Communications

Rule 3 Right to Counsel

- 3 01 Generally
- 3 02 Appointment of Counsel
 - 1 Felonies and Gross Misdemeanors
 - 2 Misdemeanors
 - 3 Out-of-Home Placement
 - 4 Probation Violation and Modification of Disposition for Delinquent Child
 - 5 Juvenile Petty Offense or Juvenile Traffic Offense
 - 6 Detention
 - 7 Child Incompetent to Proceed
 - 8 Appearance before a Grand Jury
- 3 03 Dual Representation
- 3 04 Waiver of Right to Counsel
 - 1 Conditions of Warver
 - 2 Court Approval/Disapproval
- 3 05 Renewal of Advisory
- 3 06 Eligibility for Court Appointed Counsel at Public Expense
 - 1 When Parent or Child Cannot Afford to Retain Counsel
 - 2 When Parent Can Afford to Retain Counsel
- 3 07 Right of Parent(s), Legal Guardian(s), Legal Custodian(s) and Guardian Ad Litem to Counsel
 - 1 Right of Parent(s), Legal Guardian(s) or Legal Custodian(s)
 - 2 Right of Guardian Ad Litem to Counsel
- 3 08 Certificates of Representation

Rule 4 Warrants

- 4 01 Warrant for Immediate Custody
 - 1 Probable Cause Required
 - 2 Warrant
 - 3 Warrant for Juvenile Petty or Traffic Offenses
 - 4 Contents of Warrant for Immediate Custody

- 4 02 Execution of Warrant for Immediate Custody
 - 1 Who May Execute
 - 2 How Executed
 - 3 Where Executed
 - 4 When Executed
 - 5 Possession of Warrant
 - 6 Advisory

Rule 5 Detention

- 5 01 Scope and General Principles
- 5 02 Defimtions
 - 1 Detention
 - 2 Detaining Authority
 - 3 Place of Detention
- 5 03 Detention Decision
 - 1 Presumption for Unconditional Release
 - 2 Detention Factors
 - 3 Discretion to Release Even if One or More Factors are Met
 - 4 Factors Which Cannot Support Detention Decision
- 5 04 Release or Continued Detention
 - 1 For Child Taken Into Custody Pursuant to Court Order or Warrant
 - 2 For Child Taken Into Custody Without Court Order or Warrant
 - 3 Child Taken Into Custody and Placed m an Adult Jail or Municipal Lockup
 - 4 Probable Cause Determination
 - 5 Release of Any Child at Any Time by the Court and Conditions of Release
 - 6 Release to Custody of Parent or Other Responsible Adult
- 5 05 Detention Reports
 - 1 Report by Detaining Authority
 - 2 Report by Supervisor of the Secure Detention Facility or Shelter Care Facility
 - 3 Timing of Reports
 - 4 Notice to Defense Counsel, Defense Counsel Access to Child and Reports
- 5 06 Identification Procedures
 - 1 Photographing
 - 2 Fingerprinting
 - 3 Line-Up
- 5 07 Detention Hearing
 - 1 Time and Filing
 - 2 Notice
 - 3 Advice of Rights
 - 4 Evidence
 - 5 Findings Necessary for Continued Detention
 - 6 Order
 - 7 Extension of Time for Detention Hearing
- 5 08 Detention Review
 - 1 Informal Review
 - 2 Formal Review

Rule 6 Charging Document

- 6 01 Generally
- 6 02 Tab Charge or Citation
 - 1 Generally
 - 2 Filing

- 3 Contents of Tab Charge or Citation
- 4 Notice of Court Appearance
- 6 03 Petition
 - 1 Generally
 - 2 Filing
 - 3 Contents of the Delinquency Petition
 - 4 Separate Counts
 - 5 Contents of Petition Alleging Juvenile Petty Offender or Juvenile Traffic Offender
- 6 04 Amendment
 - 1 Permissive
 - 2 Prohibited
- 6 05 Probable Cause
 - 1 Establishing Probable Cause
 - 2 When Required
 - 3 Dismissal
- 6 06 Procedure on Filing a Charging Document with the Court
 - 1 Dismissal
 - 2 Arraignment

Rule 7 Arraignment

- 7 01 Application
- 7 02 Generally
- 7 03 Timing
 - 1 Child in Custody
 - 2 Child Not in Custody
- 7 04 Hearing Procedure
 - 1 Initial Procedure
 - 2 Reading of Allegations of Charging Document
 - 3 Motions
 - 4 Response to Charging Document

Rule 8 Pleas

- 8 01 Application
- 8 02 Generally
- 8 03 Plea of Not Guilty Without Appearance
- 8 04 Plea of Guilty
 - 1 Waiver of Right to Trial
 - 2 Withdrawal of Plea
 - 3 Plea to a Lesser Offense or a Different Offense
 - 4 Acceptance or Nonacceptance of Plea of Guilty
 - 5 Future Proceedings

Rule 9 Settlement Discussions and Plea Agreements

- 9 01 Generally
- 9 02 Relationship Between the Child and the Child's Counsel
- 9 03 Disclosure of Settlement Agreement
- 9 04 Settlement Discussions and Agreements Not Admissible

Rule 10 Discovery

- 10 01 Scope and Application
- 10 02 Evidence and Identification Disclosure
- 10 03 Notice of Additional Offenses
- 10 04 Disclosure by Prosecuting Attorney
 - 1 Disclosure by Prosecuting Attorney Without Order of Court
 - 2 Disclosure Upon Order of Court
 - 3 Information Not Subject to Disclosure by Prosecuting Attorney
- 10 05 Disclosure by Child
 - 1 Information Subject to Disclosure Without Order of Court
 - 2 Disclosure Upon Order of Court
 - 3 Information Not Subject to Disclosure by Child

- 10 06 Regulation of Discovery
 - 1 Investigations Not to be Impeded
 - 2 Continuing Duty to Disclose
 - 3 Time Place and Manner of Discovery and Inspection
 - 4 Custody of Materials
 - 5 Protective Orders
 - 6 Excision
 - 7 Sanctions
 - 8 Expense
- 10 07 Taking Depositions
 - 1 Deposition of Unavailable Witness
 - 2 Procedure
 - 3 Transcription, Certification and Filing
 - 4 Failing to Appear
 - 5 Expense of Depositions

Rule 11 Pretrial Conference

- 11 01 Timing
- 11 02 Evidentiary and Other Issues

Rule 12 Omnibus Hearing

- 12 01 Scheduling of Omnibus Hearing
- 12 02 Scheduling of Trial

Rule 13 Trials

- 13 01 Purpose and Application
- 13 02 Commencement of Trial
 - 1 For a Child in Detention
 - 2 For a Child Not in Detention
 - 3 Release
 - 4 Dismissal
 - 5 Effect of Mistrial Order for New Trial
- 13 03 Trial
 - 1 Initial Procedure
 - 2 Order of Trial
- 13 04 Evidence
- 13 05 Use of Depositions at Trial
 - 1 Unavailability of Witness
 - 2 Inconsistent Testimony
 - 3 Substantive Evidence
- 13 06 Standard of Proof
- 13 07 Joint Trials
 - 1 Generally
 - 2 Severance Because of Improper Joinder
 - 3 Severance Because of Another Child's Out-of-Court Statement
 - 4 Severance During Trial
- 13 08 Joinder and Severance of Offenses
 - 1 Joinder of Offenses
 - 2 Severance of Offenses
- 13 09 Findings
- 13 10 Further Proceedings

Rule 14 Continuance for Dismissal

- 14 01 Agreements Permitted
 - 1 Generally
 - 2 Additional Conditions
 - 3 Limitations on Agreements
- 14 02 Court Approval, Filing of Agreement, Release
- 14 03 Modification of Agreement

- 14 04 Termination of Agreement Resumption of Proceedings
 - 1 Upon Notice of Child or Child's Counsel
 - 2 Upon Order of Court
- 14 05 Emergency Order
- 14 06 Release Status Upon Resumption of Delinquency
 - Juvenile Petty or Juvenile Traffic Proceedings
- 14 07 Termination of Agreement Dismissal
- 14 08 Termination and Dismissal Upon Showing of Rehabilitation
- 14 09 Modification or Termination and Dismissal Upon Child's Motion
- 14 10 Court Authority to Dismiss

Rule 15 Delinquency Disposition

- 15 01 Generally
 - 1 Findings on Charges
 - 2 Application
- 15 02 Timing
 - 1 Hearing
 - 2 Order
 - 3 Delay
 - 4 Transfer of File
- 15 03 Predisposition Reports
 - 1 Investigations and Evaluations
 - 2 Placement
 - 3 Advisory
 - 4 Filing and Inspection of Reports
- 15 04 Hearing
 - 1 Procedure
 - 2 Evidence
- 15 05 Dispositional Order
 - 1 Adjudication and Disposition
 - 2 Considerations Findings
 - 3 Duration
 - 4 Continuance Without Adjudication
- 15 06 Informal Review
- 15 07 Probation Violation
 - 1 Commencement of Proceedings
 - 2 Detention Hearing
 - 3 Admit/Deny Hearing
 - 4 Revocation Hearing
- 15 08 Other Modifications
 - 1 Generally
 - 2 Modification by Agreement
 - 3 Motion for Modification
 - 4 Written Request for Modification
 - 5 Good Cause
 - 6 Summons and Warrant
 - 7 Hearing
 - 8 Grounds for Modification

Rule 16 Post-Trial Motions

- 16 01 Post-Trial Motions
 - 1 Grounds
 - 2 Basis of Motion
 - 3 Time for Motion
 - 4 Time for Serving Affidavits
- 16 02 Motion to Vacate the Finding that the Allegations of the Petition or Charging Document are Proved
- 16 03 Joinder of Motions
- 16 04 New Trial on Court's Own Motion

Rule 17 Juvenile Petty Offender and Juvenile Traffic Offender

- 17 01 Scope Application and General Purpose
 - 1 Juvenile Petty Offender
 - 2 Juvenile Traffic Offender
 - 3 Children Under Jurisdiction of Adult Traffic Court
- 17 02 Attendance at Hearings and Privacy
- 17 03 Right to Counsel
 - 1 Generally
 - 2 Waiver
 - 3 For Appeal
 - 4 Parent, Legal Guardian or Legal Custodian as Counsel
- 17 04 Warrants
- 17 05 Detention
- 17 06 The Charging Document and Notice of Arraignment
- 17 07 Arraignment
 - 1 Generally
 - 2 Timing
 - 3 Hearing Procedure
 - 4 Reading of Allegations of Charging Document
 - 5 Motions
 - 6 Response to Charging Document
- 17 08 Pleas
 - 1 Plea of Guilty
 - 2 Plea of Not Guilty
 - 3 Withdrawal of Plea
 - 4 Plea to a Lesser Offense or a Different Offense
 - 5 Acceptance or Nonacceptance of Plea of Guilty and Future Proceedings
- 17 09 Settlement Discussions and Plea Agreements
- 17 10 Discovery
- 17 11 Pretrial and Omnibus Hearing
- 17 12 Trial
- 17 13 Continuance for Dismissal
- 17 14 Adjudication and Disposition
 - 1 Predisposition Reports
 - 2 Adjudication and Disposition
 - 3 Probation Revocation
 - 4 Other Modifications
- 17 15 Post-Trial Motions
- 17 16 Transfer to Adult Court of Juvenile Traffic Matter
 - 1 On Motion of Court or Prosecuting Attorney
 - 2 Method of Transfer
 - 3 Effect of Transfer
- 17 17 Child Incompetent to Proceed
- 17 18 Appeals
- 17 19 General Application of Other Rules

Rule 18 Certification of Delinquency Matters

- 18 01 Initiation of Certification Proceedings of Delinquency Matters
- 18 02 Notice of Certification
- 18 03 Certification Study
 - 1 Order
 - 2 Content of Reports
 - 3 Costs
 - 4 Filing and Access to Reports
 - 5 Admissibility
- 18 04 Hearing
 - 1 In General
 - 2 Initial Appearance in Certification Proceeding
 - 3 Probable Cause Determination

- 18 05 4 Conduct and Procedure for Certification Hearing
Certification Determination
 - 1 Presumption of Certification
 - 2 Non-Presumptive Certification
 - 3 Public Safety
 - 4 Prior Certification
- 18 06 5 Extended Juvenile Court Jurisdiction
Order
 - 1 Decision Timing Content of Order
 - 2 Delay
 - 3 Final Order
- 18 07 Termination of Jurisdiction Upon Certification
 - 1 Child Not in Detention
 - 2 Child in Detention
 - 3 Stay
- 18 08 First Degree Murder Accusation
 - 1 Child Ages 16 or 17
 - 2 Child Under Age 16

Rule 19 Extended Jurisdiction Juvenile Proceedings and Prosecution

- 19 01 Initiation of Extended Jurisdiction Juvenile Proceedings
 - 1 Authority
 - 2 Definitions
 - 3 Designation by Prosecuting Attorney
 - 4 Motion by Prosecuting Attorney
- 19 02 Notice of the Extended Jurisdiction Juvenile Proceeding
- 19 03 Extended Jurisdiction Juvenile Study
 - 1 Order
 - 2 Content of Reports
 - 3 Costs
 - 4 Filing and Access to Reports
 - 5 Admissibility of Study
- 19 04 Hearings on Extended Jurisdiction Juvenile Proceedings
 - 1 In General
 - 2 Initial Appearance and Probable Cause Determination
 - 3 Conduct and Procedure for Extended Jurisdiction Juvenile Hearing
- 19 05 Extended Jurisdiction Juvenile Prosecution Determination
- 19 06 Order
 - 1 Decision Timing Content of Order
 - 2 Delay
 - 3 Venue Transfer
 - 4 Final Order
- 19 07 Extended Jurisdiction Juvenile Prosecution
- 19 08 Disposition
 - 1 Guilty Plea or Conviction
 - 2 Length of Stayed Sentence
 - 3 Limitation on Certain Extended Jurisdiction Juvenile Dispositions
 - 4 Venue
 - 5 Record of Proceedings
- 19 09 Revocation
 - 1 Commencement of Proceedings
 - 2 First Appearance
 - 3 Revocation Hearing

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

- 20 01 Proceeding When Child is Believed to be Incompetent
 - 1 Competency to Proceed Defined
 - 2 Proceedings
 - 3 Hearing and Determination of Competency
 - 4 Effect of Finding on Issue of Competency to Proceed

- 5 Continuing Supervision by the Court in Felony Cases
- 6 Dismissal of Proceeding
- 7 Determination of Legal Issues Not Requiring Child's Participation
- 8 Admissibility of Child's Statements
- 20 02 Defense of Mental Illness or Mental Deficiency at the Time of the Offense
 - 1 When Raised
 - 2 Examination of the Child
 - 3 Refusal of the Child to be Examined
 - 4 Disclosure of Reports and Records of Child's Mental Illness or Mental Deficiency Examinations
 - 5 Report of Examination
 - 6 Admissibility of Evidence at Trial
 - 7 Trial
 - 8 Procedure After Hearing

Rule 21 Appeals

- 21 01 Generally
- 21 02 Proceedings in Forma Pauperis
 - 1 Generally
 - 2 Exception for Juvenile Petty Offenders and Juvenile Traffic Offenders
- 21 03 Appeal by Child
 - 1 Right of Appeal
 - 2 Procedure for Appeals
 - 3 Stay Pending Appeal
 - 4 Release of Child
- 21 04 Appeal by Prosecuting Attorney
 - 1 Scope of Appeal
 - 2 Attorney Fees
 - 3 Procedure for Appeals
 - 4 Stay
 - 5 Conditions of Release
 - 6 Cross-Appeal by Child
- 21 05 Appeal by Parent(s) Legal Guardian or Legal Custodian of the Child
- 21 06 Certified Questions to the Court of Appeals

Rule 22 Substitution of Judge

- 22 01 Before or During Trial
- 22 02 After Verdict or Finding of Guilt
- 22 03 Notice to Remove
 - 1 Service and Filing
 - 2 Removal of Presiding Judge
- 22 04 Assignment of New Judge

Rule 23 Referee

- 23 01 Authorization to Hear Cases
- 23 02 Objection to Assignment of Referee
- 23 03 Notice to Remove a Particular Referee
- 23 04 Transmittal of Findings
- 23 05 Review
 - 1 Generally
 - 2 Filing
 - 3 Right of Review Upon Filing of Timely Motion
 - 4 The Court
 - 5 Procedure
- 23 06 Order of the Court

Rule 24 Guardian Ad Litem

- 24 01 Appointment
- 24 02 Guardian Ad Litem Not Counsel for Child

Rule 25 Notice

- 25 01 Summons, Notice in Lieu of Summons, Oral Notice on the Record, Service by FAX and Notice by Telephone
 - 1 Summons
 - 2 Notice in Lieu of Summons
 - 3 Oral Notice on the Record
 - 4 Detention Hearings Service by FAX or Notice by Telephone Permitted
- 25 02 Content
- 25 03 Procedure for Notification
 - 1 First Notice by Mail
 - 2 Personal Service
 - 3 Warrant for Arrest or Immediate Custody
 - 4 Timing
 - 5 Proof of Service
- 25 04 Waiver

Rule 26 Subpoenas

- 26 01 Motion or Request for Subpoenas
- 26 02 Expense

Rule 27 Motions

- 27 01 Motions to be Signed
- 27 02 Service of Motions
 - 1 When Required
 - 2 How Made
 - 3 Time

Rule 28 Copies of Orders**Rule 29 Recording**

- 29 01 Procedure
- 29 02 Availability of Transcripts
 - 1 Child's Counsel and Prosecuting Attorney
 - 2 Counsel for Parent(s) Legal Guardian or Legal Custodian
- 29 03 Expense

Rule 30 Records

- 30 01 Generally
 - 1 Records Defined
 - 2 Duration of Maintaining Records
- 30 02 Availability of Juvenile Court Records
 - 1 By Statute or Rule
 - 2 No Order Required
 - 3 Court Order Required

Rule 31 Timing

- 31 01 Computation
- 31 02 Additional Time After Service by Mail

Juvenile Protection Rules**Rule 37 Scope, Application, General Purpose and Construction**

- 37 01 Scope and Application
- 37 02 Purpose and Construction
- 37 03 Indian Child Welfare Act Applicability

Rule 38 Referee

- 38 01 Authorization to Hear Cases
- 38 02 Objection to Assignment of Referee
- 38 03 Transmittal of Findings
- 38 04 Review
 - Subd 1 Generally
 - Subd 2 Filing
 - Subd 3 Right of Review Upon Filing of Timely Motion
 - Subd 4 Discretionary Review
 - Subd 5 Procedure
- 38 05 Order of the Court

Rule 39 Right to Participate

- 39 01 Right of Child
 - Subd 1 Under Twelve (12) Years of Age
 - Subd 2 Twelve (12) Years of Age and Older
- 39 02 Right of Parent(s) and Guardian
- 39 03 County Welfare Board and County Attorney
- 39 04 Guardian Ad Litem
- 39 05 Petitioner
- 39 06 Procedure

Rule 40 Right to Counsel

- 40 01 Right of Child and Parent(s) to Separate Counsel
 - Subd 1 Generally
 - Subd 2 Advisory of Right to Counsel
 - Subd 3 Appointment of Counsel
- 40 02 Right of Guardian Ad Litem to Counsel

Rule 41 Guardian Ad Litem

- 41 01 Appointment of Guardian Ad Litem
- 41 02 Determination Not to Appoint Guardian Ad Litem
- 41 03 Standards
- 41 04 Findings
- 41 05 Discretionary Appointment of Guardian Ad Litem
- 41 06 Guardian Ad Litem Not Counsel for Child
- 41 07 Guardian For More Than One Child
- 41 08 Guardian Ad Litem for Parent

Rule 42 Presence at Proceedings

- 42 01 Right to Attend Hearing
- 42 02 Absence Does Not Bar Hearing
- 42 03 Exclusion of Persons Who Have Right to Attend Hearings
- 42 04 Record of Exclusion and Right to Continued Participation

Rule 43 Privacy

- 43 01 Attendance at Hearings

Rule 44 Notice

- 44 01 Notice, Summons, Court Orders
 - Subd 1 Notice
 - Subd 2 Summons
 - Subd 3 Court Orders
- 44 02 Procedure
 - Subd 1 Generally
 - Subd 2 Discretionary Service
 - Subd 3 Minimum Required Initial Service
 - Subd 4 Execution of Personal Service
 - Subd 5 Place of Service
 - Subd 6 Manner of Service
 - Subd 7 Timing

- Subd 8 Proof of Service
- 44 03 Content of Summons or Notice
- 44 04 Waiver

Rule 45 Copies of Orders**Rule 46 Recording**

- 46 01 Procedure
- 46 02 Availability of Transcripts
- 46 03 Expense

Rule 47 Continuances and Advancements

- 47 01 By Court Order
- 47 02 Existing Orders

Rule 48 Subpoenas

- 48 01 Motion for Subpoenas
- 48 02 Expense

Rule 49 Motions

- 49 01 Motions to be Signed
- 49 02 Service of Motions
 - Subd 1 When Required
 - Subd 2 How Made
 - Subd 3 Time
- 49 03 Ex Parte Motion

Rule 50 Waiver of Counsel and Other Rights

- 50 01 Waiver of Right to Counsel and Other Rights
 - Subd 1 Standards
 - Subd 2 Recording
 - Subd 3 Renewal

Rule 51 Immediate Custody

- 51 01 Order for Immediate Custody
 - Subd 1 Order Upon Probable Cause
 - Subd 2 Order Without Probable Cause Petition
- 51 02 Contents of Order for Immediate Custody
- 51 03 Execution of Order for Immediate Custody
 - Subd 1 Who May Execute
 - Subd 2 How Executed
 - Subd 3 Where Executed
 - Subd 4 When Executed
 - Subd 5 Possession of Order
 - Subd 6 Advisory

Rule 52 Prehearing Placement (Detention)

- 52 01 Generally
- 52 02 Release or Continued Placement
 - Subd 1 Child Taken Into Custody With Court Order
 - Subd 2 Child Taken Into Custody Without Court Order – Mandatory Release
 - Subd 3 Discretionary Release by Court
 - Subd 4 Discretionary Release by Officer or County Attorney
 - Subd 5 Release to Custody of Parent
- 52 03 Reports
 - Subd 1 Report by Detaining Officer
 - Subd 2 Report by Supervisor of Placement Facility
- 52 04 Placement Hearing (Detention Hearing)
 - Subd 1 Generally
 - Subd 2 Continuance

- Subd 3 Information of Hearing to be Provided
- Subd 4 Advice of Rights
- Subd 5 Evidence
- Subd 6 Finding Necessary for Continued Placement
- 52 05 Release of the Child
- 52 06 Placement Order
 - Subd 1 Alternatives
 - Subd 2 Content
- 52 07 Placement Review
 - Subd 1 Informal Placement Review
 - Subd 2 Formal Detention Review

Rule 53 Petition

- 53 01 Procedure
 - Subd 1 Drafting and Filing
 - Subd 2 Verification
- 53 02 Contents
- 53 03 Petition with Probable Cause
 - Subd 1 When Required
 - Subd 2 In or With Petition
- 53 04 Amendment
- 53 05 Timing
- 53 06 Determination to Proceed on Petition

Rule 54 First Appearance

- 54 01 Generally
- 54 02 Timing
 - Subd 1 Child in Placement
 - Subd 2 Child Not in Placement
 - Subd 3 Possession of Petition
- 54 03 Hearing Procedure
 - Subd 1 Initial Procedure
 - Subd 2 Reading of Allegations of Petition
 - Subd 3 Motions

Rule 55 Admission or Denial

- 55 01 Generally
- 55 02 Denial
 - Subd 1 Denial Without Appearance
 - Subd 2 Further Proceedings After Denial
- 55 03 Admission
 - Subd 1 Admission Without Appearance
 - Subd 2 Questioning of Person Admitting the Allegations of Petition
 - Subd 3 Factual Basis for Admission
 - Subd 4 Withdrawal of Admission
 - Subd 5 Acceptance or Nonacceptance of Admission
 - Subd 6 Future Proceedings

Rule 56 Settlement Discussions

- 56 01 Generally
- 56 02 Procedure
- 56 03 Settlement Agreement on Record
- 56 04 Settlement Agreement May Include Disposition Recommendation

Rule 57. Discovery

- 57 01 Generally
- 57 02 Methods of Discovery
- 57 03 Scope of Discovery

- Subd 1 Generally
- Subd 2 Written, Recorded or Transcribed Statements
- Subd 3 Witnesses
- Subd 4 Trial Preparation Materials
- 57 04 Stipulation Regarding Discovery Procedure
- 57 05 Duty to Disclose
 - Subd 1 Supplementation of Response
 - Subd 2 Amendment
- 57 06 Protective Orders
 - Subd 1 Generally
 - Subd 2 Denial
- 57 07 Expenses
- 57 08 Physical and Mental Examinations
 - Subd 1 Generally
 - Subd 2 Copy of Report of Examination
 - Subd 3 Disclosure After Waiver of Privilege
- 57 09 Depositions
 - Subd 1 Generally
 - Subd 2 Notice of Taking
 - Subd 3 Before Whom Taken
 - Subd 4 Recording
 - Subd 5 Procedure
 - Subd 6 Use of Deposition
 - Subd 7 Objection at Hearing
 - Subd 8 Effect of Taking or Using Depositions
 - Subd 9 Errors and Irregularities
- 57 10 Failure to Comply Sanctions
 - Subd 1 Compelling Discovery
 - Subd 2 Failure to be Sworn
 - Subd 3 Failure to Appear or Respond
 - Subd 4 Order

Rule 58 Pretrial Conference

- 58 01 Timing

Rule 59 Trials

- 59 01 Generally
- 59 02 Timing
 - Subd 1 Commencement of Trial
 - Subd 2 Dismissal
 - Subd 3 Effect of Mistrial Order of New Trial
- 59 03 Procedure
 - Subd 1 Initial Procedure
 - Subd 2 Conduct and Procedure
- 59 04 Evidence
- 59 05 Standard of Proof
- 59 06 Finding on Petition
- 59 07 Further Proceedings

Rule 60 Motion for New Trial

- 60 01 New Trial
 - Subd 1 Generally
 - Subd 2 Stay of Previous Finding
 - Subd 3 Finding
- 60 02 Grounds
- 60 03 Procedure
 - Subd 1 Basis of Motion
 - Subd 2 Time for Motion

- Subd 3 Time for Serving Affidavits
- Subd 4 Joinder of Motions
- 60 04 New Trial on Court s Own Motion

Rule 61 Adjudication

- 61 01 Adjudication
- 61 02 Withholding Adjudication
- 61 03 Further Proceedings

Rule 62 Disposition

- 62 01 Generally
- 62 02 Timing
- 62 03 Predisposition Reports
 - Subd 1 Investigations and Evaluations
 - Subd 2 Advisory
 - Subd 3 Filing and Inspection of Reports
 - Subd 4 Discussion of Contents of Reports
 - Subd 5 Discussion of Contents of Report – Limitation by Court
- 62 04 Hearing
 - Subd 1 Procedure
 - Subd 2 Evidence
- 62 05 Order
- 62 06 Informal Review
 - Subd 1 Timing
 - Subd 2 Modification of Disposition
- 62 07 Formal Review
 - Subd 1 Formal Review Hearing Upon Written Objection to Modification
 - Subd 2 Formal Review Hearing Upon Written Request
 - Subd 3 Notice
 - Subd 4 Procedure

Rule 63 Appeal

- 63 01 Appeal
 - Subd 1 Appealable Orders
 - Subd 2 Procedure
 - Subd 3 Cross–Appeal
- 63 02 Court Hearing Appeal
 - Subd 1 Appeal from a District Court Juvenile Court
 - Subd 2 Appeal from a County Probate–Juvenile Court

Rule 64 Records

- 64 01 Generally
- 64 02 Availability of Juvenile Court Records
 - Subd 1 By Statute or Rule
 - Subd 2 No Order Required
 - Subd 3 Court Order Required
- 64 03 Court Rule May Define Process

Rule 65 Timing for Delinquency, Petty, Traffic and Juvenile Protection Matters

- 65 01 Computation
- 65 02 Additional Time After Service by Mail

Appendix of Proposed Forms

- Statement of Rights – Delinquency Proceedings
- Statement of Rights – Juvenile Petty Offender Proceedings
- Statement of Rights – Juvenile Traffic Offender Proceedings
- Notice of the Rights of Victims in Juvenile Court Proceedings
- Juvenile Court Proceedings

Application to Enter a Guilty Plea in Juvenile
Delinquency Cases
Notice in Lieu of Summons
Summons
Prosecutor's Request for Disclosure
Prosecutor Notice of Evidence and Identification Procedures

Revisor's Note: Supreme Court Order dated June 26, 1996 provides in part: "The inclusion of Advisory Committee comments is made for convenience and does not reflect court approval of the comments made therein."

TEXT OF RULES

Delinquency, Juvenile Petty Offenses and Juvenile Traffic Offenses

Effective August 1, 1996

Rule 1 Scope, Application and General Purpose

1.01 Scope and Application

Minnesota Rules of Juvenile Procedure 1 through 31 govern the procedure in the juvenile courts of Minnesota for all delinquency matters as defined by Minnesota Statutes, section 260.015, subd. 5, juvenile petty matters as defined by Minnesota Statutes, section 260.015, subd. 21 and juvenile traffic matters as defined by Minnesota Statutes, section 260.193. Procedures for juvenile traffic and petty matters are governed by Minnesota Rules of Juvenile Procedure 17.

Juvenile protection matters, including truants and runaways, are governed by the procedures in Minnesota Rules of Juvenile Procedure 37 through 65.

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.

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 257.35 – 257.3579 applies, these rules shall be construed to be consistent with that act.

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.

Comment—Rule 1

Minn. R. Juv. P. 1.02 is based upon Minnesota Statutes, section 260.011, subd. 2(c) (1994).

The Indian Child Welfare Act does not apply to placements of Indian children which are based upon an act which, if committed by an adult, would be deemed a crime. 25 U.S.C. section 1903(1) (1988). However, Minnesota Statutes, section 257.352 (1994) 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 260.185 subd. 1(c)(1), (2) and (3) (1994) following an adjudication for a misdemeanor-level delinquent act

Rule 2 Attendance at Hearings and Privacy

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 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 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

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, 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.

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. The court may use all methods of restraining necessary to conduct the proceedings in an orderly manner. If the child is restrained or removed from the courtroom, the court shall state the reasons for the restraint or 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.

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 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 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

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

Comment—Rule 2

Minn R Juv 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 260 155 subd 1(c) (1994) 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 P 2 02 permits exclusion of persons from hearings even when they have a right to participate to serve the child's best interest 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 interest 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 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 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

Rule 3 Right to Counsel

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

3 02 Appointment of Counsel

Subdivision 1 Felonies and Gross Misdemeanors In any 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 Misdemeanors In any 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 standby 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 standby 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 related violation proceedings or in subsequent contempt proceedings, if the child was not initially represented by counsel or stand-by counsel. 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 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 where a child charged with a misdemeanor is designated a juvenile petty offender by the prosecuting attorney as set forth in Minnesota Rules of Juvenile Procedure 17 01, subd 1 (C) or as otherwise provided pursuant to Minnesota Rules of Juvenile Procedure 3 02 subds 3 6 and 7. 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 has the right to 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. If the child waives representation, standby counsel shall be appointed.

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 December 12, 1997, for all juvenile actions commenced or arrests made on or after 12 00 o'clock midnight January 1 1998)

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 Minnesota Rules of Juvenile Procedure 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 the child's Sixth Amendment protections

3 04 Waiver of Right to Counsel

Subdivision 1 Conditions of Waiver The following provision does not apply to Juvenile Petty Offenses, which are governed by Rule 17. Any waiver of counsel must be made knowingly, intelligently, and voluntarily. Any waiver shall be in writing and 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. 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 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 Minnesota Rules of Juvenile Procedure 3.02. (Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12:00 o'clock midnight January 1, 1998.)

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.

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

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 petition 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 The guardian ad litem of the child shall be represented by the child s counsel However in the event of a conflict between the child and the guardian ad litem, considered in the context of the matter counsel for the child shall continue to represent the child The court may appoint separate counsel to represent the guardian ad litem

3 08 Certificates of Representation

A lawyer representing a client in juvenile court, other than a public defender shall file with the court administrator on the first appearance a certificate of representation

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 by mail or personal service upon the client and upon the prosecuting attorney, 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 client and the prosecuting attorney by mail or personal service and due proof of such service has been filed with the court administrator

(Added December 12 1997 for all juvenile actions commenced or arrests made on or after 12 00 o clock midnight January 1 1998)

Comment—Rule 3

Minn R Juv P 3 prescribes the general requirements for appointment of counsel for a juvenile In re Gault, 387 U S 1 (1967) Minnesota Statutes section 260 155 subd 2 (1994)

Minn R Juv 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 (1994) 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 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 260.155 subd 2 (1994) expands the right to counsel and requires that an attorney shall be appointed in any proceeding in which a child is charged with a felony or gross misdemeanor.

If a child in a felony or gross misdemeanor case exercises the right to proceed without counsel, *Faretta v California*, 422 U.S. 806 (1975) *State v Richards*, 456 N.W.2d 260 (Minn. 1990) then Minn. R. Juv. 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. P. 3.02 subd. 2 requires a court to appoint counsel for a child charged with a misdemeanor unless that child affirmatively waives counsel as provided in Minn. R. Juv. P. 3.04. Minn. R. Juv. 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 or 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 Whudby*, 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. 687, 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. 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 See Minn R Juv P 17 03 subd 1(D) 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 defendant or prejudicing the right to a fair and impartial trial Minn R Juv 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 delinquent without the assistance of counsel if those convictions provide 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 260 015 subd 21 defines juvenile petty offenses and converts most offenses that would be misdemeanors if committed by an adult into petty offenses Minnesota Statutes section 260 015 subd 21 (Supp 1995) 1996 Minn Laws Ch 408 Art 6 Sec 1 Minn R Juv P 3 02 subd 5 implements procedurally the legislative redefinition of misdemeanors 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 260 195 subd 3 (Supp 1995) If the court seeks to impose dispositions other than those authorized pursuant to Minnesota Statutes section 260 195 subd 3 (Supp 1995), then the provisions of Minn R Juv P 3 02 subd 2 or subd 3 may be applicable Where inpatient treatment is a possibility as it is pursuant to Minnesota Statutes section 260 195 subd 4 (1994) for children who are found to have committed a third or subsequent juvenile alcohol or controlled substance offense Minn R Juv P 3 02 subd 3 provides a right to counsel at public expense even if the prosecuting attorney decides to designate the child a juvenile petty offender See Minn R Juv P 17 03 subd 1(D) 1996 Minn Laws Ch 408 Art 6 Sec 5 A child retains an absolute right to withdraw any plea obtained without the assistance of counsel or to obtain a new trial if adjudicated a petty offender without the assistance of counsel if either 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 993)

Minn R Juv 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 least at the 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 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

Minn R Juv P 3 03 regarding advising children of the perils of dual representation is patterned after Minn R Crim P 17 03

Minn R Juv 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 260 155 subd 8 (1994) (' 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 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 W2d 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 W2d 706 (standby counsel available to and did consult with defendant throughout proceedings and participated occasionally on defendant s behalf) Burt, 256 N W2d at 635 (One way for a trial court to help ensure that a defendant s waiver of counsel is knowing and intelligent would be to provide a lawyer to consult with the defendant concerning his proposed waiver)

In State v. Rubin, the court described the type of penetrating and comprehensive examination that must precede a knowing and intelligent waiver and strongly recommended the appointment of counsel to advise and consult with the defendant as to the waiver See also ABA Standards of Criminal Justice, Providing Defense Services sections 5-7 3 (1980) Minn R Crim P 5 02 Minn R Juv 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 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, — U S — 114 S Ct 1921 (1994), United States v. Johnson, 28 F3d 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 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 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 Minn R Crim P 5 02 subds 3-5

Minn R Juv 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 260 251 subd 4 (1994) ([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 W2d 194 200 (Minn 1986)

Minn R Juv 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
(Comment amended December 12 1997)*

Rule 4 Warrants

4 01 Warrant for Immediate Custody

Subdivision 1 Probable Cause Required Probable cause may be established by facts set forth in writing attached to the charging document, by facts set forth in the charging document, by affidavit(s) attached to the charging document, or by sworn testimony presented to the court on the record

Subd 2 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

(A) the child has committed a delinquent act as defined by Minnesota Statutes section 260 015, subd 5 and

(B) 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

(C) the child or others are in danger of imminent harm, or

(D) the child has left the custody of the detaining authority without permission of the court or

(E) the child has violated a court order, or

(F) the child has violated the terms of probation

Subd 3 Warrant for Juvenile Petty or Traffic Offenses 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 260 015 subd 21 or a juvenile traffic offense as defined by Minnesota Statutes section 260 193 and

(B) 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

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 designated by the court 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

(Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12 00 o clock midnight January 1 1998)

4 02 Execution of Warrant for Immediate Custody

Subdivision 1 Who May Execute The warrant for immediate custody may only be executed by a peace officer authorized by law to execute a warrant

Subd 2 How Executed The warrant for immediate custody shall be executed by taking the child into custody

Subd 3 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 4 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 misdemeanor petty offense or juvenile traffic offense the child may not be taken into custody on Sunday or between the hours of 10 00 o'clock p m and 8 00 o'clock a m on any other day except by direction of the judge endorsed on the warrant when exigent circumstances exist or when the child named in the warrant is found on a public highway or street

Subd 5 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 6 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

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 P 4 01 subd 1 See Minnesota Statutes section 260 145 (1994) Probable cause is required for every warrant issued Before the court may issue a warrant it shall make a finding of probable cause based on the contents of the petition any supporting affidavits or sworn supplemental testimony to believe that the child committed an act governed by Minnesota Statutes section 260 015 subd 5 subd 21 or Minnesota Statutes section 260 193 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 260 145 (1994) Minnesota Statutes section 260 135 subd 5 (1994)

Minn R Juv P 4 01 subd 2 prescribes the contents of the warrant When a child is taken into custody a detention hearing shall commence pursuant to Minn R Juv P 5 within thirty-six (36) hours

Under Minn R Juv P 4 02 a warrant may be executed only by a peace officer Limitations on the manner of execution are the same as those set out in Minn R Crim P 3 03 subd 3 for adults where the offense charged is a misdemeanor or non-criminal offense The minor nature of misdemeanors juvenile petty and juvenile traffic offenses should not ordinarily justify taking a child into immediate custody during the prescribed period of time

Rule 5 Detention

5 01 Scope and General Principles

Minnesota Rules of Juvenile Procedure 5 governs all physical liberty restrictions placed upon a child before trial, disposition or pending a probation violation hearing

5 02 Definitions

Subdivision 1 Detention Detention includes all liberty restrictions that 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 or

(C) the court orders conditions of release such as out-of-home placement home detention, electronic monitoring or other physical limitations

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 A place of detention can be any one of the following places

- (A) the child's home subject to electronic home monitoring house arrest or other physical 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

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 nonexclusive 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 Minnesota Rules of Juvenile Procedure 5 04 subd 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 Cannot 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

5 04 Release or Continued Detention

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 shall 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 Minnesota Rules of Juvenile Procedure 5 07, subd 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 thirty–six (36) hours

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 Minnesota Rules of Juvenile Procedure 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 Minnesota Rules of Juvenile Procedure 5 07, subd 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 thirty–six (36) hours

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 twenty–four (24) hour period, a delinquency petition and a motion for certification to adult court have 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 an appropriate juvenile facility The court may extend the time for a detention hearing for good cause pursuant to Minnesota Rules of Juvenile Procedure 5 07, subd 7 only if a delinquency petition and a motion for certification to adult court have 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 delinquency petition and a motion for certification to adult court has been filed with the court within that six (6) hour 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 an appropriate juvenile facility 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. Oral testimony shall be recorded and retained by the judge. Written facts may be presented to the judge by telephone, facsimile, video, or other similar device. If probable cause is determined on written facts and the judge is not personally present 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, 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 Minnesota Rules of Juvenile Procedure 5, 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 Minnesota Rules of Juvenile Procedure 5.07, subd. 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.

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 260.171, subds. 4 and 5a, including the advisory that every child at a detention hearing has a right to counsel at public expense pursuant to Minnesota Rules of Juvenile Procedure 3.02, subd. 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 260.171, subds. 4 and 5a 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 Defense Counsel, Defense 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. Defense counsel shall have immediate and continuing access to the child.

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.

(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 may be fingerprinted without court order. Otherwise, a court order is required pursuant to Minnesota Rules of Juvenile Procedure 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 Minnesota Rules of Juvenile Procedure 10.05, subd. 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.

5.07 Detention Hearing

Subdivision 1 Time and Filing The court shall commence a detention hearing within thirty-six (36) hours of the child being taken into custody. 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 Minnesota Rules of Juvenile Procedure 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 Minnesota Rules of Juvenile Procedure 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 thirty-six (36) hours if, after a hearing, the court finds

(A) probable cause to believe the child committed the offense(s) alleged pursuant to Minnesota Rules of Juvenile Procedure 5.04, subd 4, and

(B) there is reason to believe that if the child were released, after consideration of the factors set forth in Minnesota Rules of Juvenile Procedure 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 Minnesota Rules of Juvenile Procedure 5.07, subd 5, are not made.

(B) *Detention*. If the findings required by Minnesota Rules of Juvenile Procedure 5.07, subd 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.

(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.

5 08 Detention Review

Subdivision 1 Informal Review An informal review of detention shall be made by the court every eight (8) days. 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.

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 Minnesota Rules of Juvenile Procedure 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 Minnesota Rules of Juvenile Procedure 5 07, subd. 5.

Comment—Rule 5

Two general principles underlie Minn. R. Juv. P. 5 1) there is a presumption in favor of releasing an accused child unconditionally and 2) where 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 nonphysical 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 260 135, subd. 5 (1994) authorizes the officer serving a summons with a judicial endorsement to take into immediate custody a child whose health or safety is endangered. Minnesota Statutes, section 260 145 (1994) 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 260 165 (1994) authorizes a child to be taken into custody pursuant to the laws of arrest, or a peace officer to apprehend a child who has run away or who is found in circumstances that endanger the child's health or safety. Minn. R. Juv. P. 5 07 defines the circumstances under which a child is subject to continuing physical restraints. Minnesota Statutes, section 260 172 (1994) authorizes a detention hearing and provides the statutory framework that governs this rule.

Minn. R. Juv. 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, house arrest, or other physical restrictions. In addition, the provisions of this rule apply whenever prior to disposition the child is placed out 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 260.015 subd. 7 (1994)) or shelter care facility (Minnesota Statutes section 260.015 subd. 17 (1994)) in a detoxification or mental health treatment facility, in a secure detention facility (Minnesota Statutes section 260.015 subd. 16 (1994)) 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 P 5.03 subd. 1 establishes a general presumption in favor of unconditional release for all children taken into custody. Minn R Juv P 5.03 subd. 2 provides some nonexclusive evidentiary guidelines by which detaining authorities can decide whether a child meets the criteria for detention. Under Minn R Juv 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 commitments 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 260.125 subds. 2a and 2b (1995). However, detaining authorities should exercise individualized discretion and not automatically detain all children charged with certain offenses. 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 nonexclusive 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 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 P 5.03 subd. 2.

Minn R Juv 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 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 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 P 5.04 subd. 3 is based upon 1996 Minn. Laws Ch. 408 Art. 6 Sec. 7 which amends Minnesota Statutes section 260.171 subd. 2. The statute, as amended, 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. 1996 Minn. Laws Ch. 408 Art. 6 Sec. 7. 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 delinquency petition and a motion for certification within twenty-four (24) hours of the child being taken into custody, excluding Saturdays, Sundays, and legal holidays. Minn R 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 an appropriate juvenile facility. *Id.* See also 42 U.S.C.A. section 5633(a)(14) (1995).

Minn R Juv P 5.04 subd. 4 is based upon Minn R Crim P 4.03. Under Minn R Juv 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 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 the day of arrest Saturday 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 P 5 05 subd 4 requires the court administrator to notify the office of the Public Defender that a child is in custody and the time of the detention hearing and to provide facsimile copies of all reports transmitted to the court If a specific attorney has been assigned to represent the child that attorney should receive notice In jurisdictions where public defenders rotate notice to the chief public defender would be sufficient Minnesota data privacy laws do not restrict notification of counsel of a child's detention prior to the first appearance in court and appointment of counsel The rules of professional responsibility and attorney client privilege adequately protect the privacy of the child

Minn R Juv P 5 06 subd 1 implements the provision of Minnesota Statutes section 260 161 subd 3(c) (Supp 1995) which authorizes peace officers to take a photograph of a child taken into custody according to the laws of arrest pursuant to Minnesota Statutes section 260 165 subd 1(b) (1994) Any photograph taken of a child must be destroyed when the child reaches the age of 19 years Minn R Juv P 5 06 subd 2 implements the provisions of Minnesota Statutes section 299C 10 (Supp 1995) which authorize law enforcement personnel to take the fingerprints of all juveniles committing felonies

Minn R Juv 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* " See 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 line-up 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 P 5 07 implements Minnesota Statutes section 629 725 (Supp 1995) 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 inca

pacitated 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 (Supp 1995). Crime of violence has the meaning given it in Minnesota Statutes section 624.712 subd 5 (Supp 1995) and also includes gross misdemeanor violations of Minnesota Statutes section 609.224 (Supp 1995) and nonfelony violations of Minnesota Statutes sections 518B.01 (Supp 1995), 609.2231 (1994), 609.3451 (Supp 1995), 609.748 (Supp 1995), and 609.749 (Supp 1995). Id.
(Comment amended December 12, 1997)

Rule 6 Charging Document

6 01 Generally

A charging document is a petition, tab charge or a citation

6 02 Tab Charge or Citation

Subdivision 1 Generally Juvenile petty offenses as defined by Minnesota Statutes, section 260.015 subd 21 misdemeanors, juvenile traffic offenses and gross misdemeanors under Minnesota Statutes section 169.121 may be charged by tab charge or 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 tab charge or citation may be filed with the court by the peace officer or attendance officer who issued the charges, it shall be endorsed by the prosecuting attorney to permit screening for diversion programs. Filing a tab charge or citation gives the juvenile court jurisdiction over the matter.

Subd 3 Contents of Tab Charge or Citation Tab charges or citations shall contain

(A) the name, address, date of birth, and race 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

Subd 4 Notice of Court Appearance When a tab charge or citation is filed with the court, the court administrator shall promptly schedule the matter for hearing and send notices as provided by Minnesota Rules of Juvenile Procedure 25.

(Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12:00 o'clock midnight January 1, 1998)

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, section 169.121 which may be charged by tab charge or 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 acknowledgment 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.

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 applicable Minnesota Offense Code (MOC)
- (D) the name date of birth address and race of the child
- (E) the names and addresses of the child s parent(s) legal guardian legal custodian or nearest known relative,
- (F) the name and address of the child s spouse

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 driver's 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 applicable Minnesota Offense Code (MOC)
- (F) the date county, and place of the alleged offense

(Amended December 12 1997 for all juvenile actions commenced or arrests made on or after 12 00 o'clock midnight January 1, 1998)

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 petition 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 petty offense or juvenile traffic offense

6 05 Probable Cause

Subdivision 1 Establishing Probable Cause The facts establishing probable cause may be set forth in writing in the charging document or police reports may be attached to the charging document If police reports are attached to 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. Probable cause may also be presented by sworn affidavits attached to a charging document or by sworn testimony presented to the court. 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 Minnesota Rules of Juvenile Procedure 4

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

(C) within ten (10) days of a court order directing the prosecuting attorney to establish probable cause on the charge(s) alleged in a petition. 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 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.

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 260 015 subd 5 a juvenile petty offense as defined by Minnesota Statutes section 260 015 subd 21 or a juvenile traffic offense as defined by Minnesota Statutes, section 260 193

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 Minnesota Rules of Juvenile Procedure 25

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 Minnesota Statutes, sections 169 121 (Supp 1995) and 169 129 (1994) were amended to permit tab charges for these offenses to get cases to court more promptly. If a demand for formal complaint is made by an adult charged with a gross misdemeanor alcohol offense the prosecutor must file the complaint in 48 hours if the defendant is in custody and within 10 days if not in custody.

In its overhaul of juvenile statutes the legislature also expanded the list of offenses which may be charged by tab charge rather than petition in juvenile court. See Minnesota Statutes section 260 015 subd 21 (Supp 1995) 1996 Minn Laws Ch 408 Art 6 Sec 1 A tab charge is a brief statement entered upon the records by the clerk of the offense charged and citation to the statute rule regulation ordinance or other provision of the law a child is alleged to have violated. The tab charge serves as a substitute for a petition. Tab charges may be used for any misdemeanor and for gross misdemeanors under Minnesota Statutes sections 169 121 (Supp 1995) and 169 129 (1994). Adults have the right to demand a formal complaint in place of a tab charge. These rules have afforded juveniles the right to demand a petition where the child is charged with a misdemeanor(s) or gross misdemeanor(s).

A citation is defined as a writ issued out of a court of competent jurisdiction or an order issued by police commanding the person named to appear on a designated day and respond to a particular violation. It is most commonly used for minor offenses such as traffic violations. Some tickets issued by police are called citation some are called complaint and some are called tab charge. The terms have become interchanged in everyday use.

Minn R Juv P 6 06 subd 2 provides that the court administrator shall promptly schedule the matter for hearing when a charging document is filed with the court. Certain offenses may be resolved without a court appearance by mailing or delivering to the court administrator a payable fine which has been predetermined by the court. Each judicial district may

establish a list of minor offenses which may be settled by paying a fine. It is recommended that the list be made part of or considered by the district in establishing its dispositional criteria.

Minn R Juv 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 260 131 subd 1 (1994) 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 P 6 03 subd 3 sets forth the necessary contents of the petition.

Rule 7 Arraignment

7 01 Application

This rule is not applicable to proceedings on juvenile petty offenses or juvenile traffic offenses, which are governed by Minnesota Rules of Juvenile Procedure 17.

7 02 Generally

Arraignment is a hearing at which the child shall enter a plea in the manner provided in Minnesota Rules of Juvenile Procedure 8.

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 Minnesota Rules of Juvenile Procedure 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 within twenty (20) days after the child has been served with the charging document. The child has the right to have a copy of the charging document for three (3) days before being arraigned.

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, race, 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 Minnesota Rules of Juvenile Procedure 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,
- (G) if two or more children are charged jointly with the same offense, advise the child of the danger of dual representation pursuant to Minnesota Rules of Juvenile Procedure 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 December 12, 1997 for all juvenile actions commenced or arrests made on or after 12:00 o'clock midnight January 1, 1998.)

Comment—Rule 7

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

Rule 8 Pleas

8 01 Application

This rule is not applicable to proceedings on juvenile petty or juvenile traffic offenses, which are governed by Minnesota Rules of Juvenile Procedure 17. Pleas in extended jurisdiction juvenile proceedings shall be pursuant to Minnesota Rules of Criminal Procedure 15.

8 02 Generally

If the child pleads not guilty to charges alleged in the charging document, the court shall conduct proceedings in accordance with Minnesota Rules of Juvenile Procedure 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.

8 03 Plea of Not Guilty Without Appearance

Except when the child is in detention, a written plea of not guilty or a plea of not guilty on the record may 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 either personally or by mail.

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

(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 remains without counsel or with only stand-by 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 his rights and on the choice to admit guilt or to deny charges in the petition 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,

(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 a 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 Minnesota Rules of Juvenile Procedure 14 and 15

Rule 9 Settlement Discussions and Plea Agreements

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.

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.

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.

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

10 01 Scope and Application

Minnesota Rules of Juvenile Procedure 10 applies to discovery for delinquency proceedings, certification hearings and extended jurisdiction juvenile proceedings and prosecutions. Pursuant to Minnesota Rules of Juvenile Procedure 17 10, 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. Pursuant to Minnesota Rules of Juvenile Procedure 1 01, references in this rule to child's counsel include the child who is proceeding pro se.

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 days of a not guilty plea by the child. If counsel for the child 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 counsel for the child.

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 prose-

cuted 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.

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) *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).

(G) *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 Minnesota Rules of Juvenile Procedure 10 04, subd 1, (C)–(F), 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 Minnesota Rules of Juvenile Procedure 10 04 subd 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

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 or reference 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 mental deficiency is governed by Minnesota Rules of Juvenile Procedure 20 02, subd 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 or reference 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 Minnesota Rules of Juvenile Procedure 10.05 subd 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 Minnesota Rules of Juvenile Procedure 10.05 subd 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 Minnesota Rules of Juvenile Procedure 10.05 subd 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

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 the 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 the prosecuting attorney or the child's 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

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 docu-

ment, 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 on 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 hearing shall be the same as would be allowed at a certification 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 securely seal the deposition in an envelope endorsed with the title of the case and marked "Deposition of (here insert name of witness)" and shall promptly file it with the court in which the case is pending or send it by registered or certified mail to the court administrator thereof for filing. 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) to pay

Comment—Rule 10

Minn R Juv 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 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 W2d 167 (1965)

Minn R Juv 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 (Supp 1995) if the prosecutor knew for instance of the child's prior adjudication for misdemeanor assault against the same victim in another county

Rule 11 Pretrial Conference

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

11 02 Evidentiary and Other Issues

At the pretrial the court shall determine whether there are any constitutional or evidentiary issues and, if so, schedule an omnibus hearing pursuant to Minnesota Rules of Juvenile Procedure 12 If there is no pretrial, 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 P 1 01

Rule 12 Omnibus Hearing

12 01 Scheduling of Omnibus Hearing

The court shall hold an omnibus hearing pursuant to Minnesota Rules of Criminal Procedure Rule 11 any time before trial to determine issues raised pursuant to Minnesota Rules of Juvenile Procedure 10 or 11 upon its own motion or upon motion of the child 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

12 02 Scheduling of Trial

If a demand for speedy trial was made the omnibus hearing will 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 JPL, 359 N.W.2d 622 (Minn. Ct. App. 1984). Continuances of trial beyond a speedy trial demand 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. P. 22.

Rule 13 Trials

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 Minnesota Rules of Juvenile Procedure 19. Pursuant to Minnesota Rules of Juvenile Procedure 1 01, references in this rule to "child's counsel" include the child who is proceeding pro se.

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 the 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 or 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.

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's 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

13 04 Evidence

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

13 05 Use of Depositions at Trial

Subdivision 1 Unavailability of Witness

At a trial or hearing a part of 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

13 06 Standard of Proof

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

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 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.

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, 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 crime. Misjoinder of offenses is not a ground for dismissal.

13 09 Findings

Within seven (7) days of the conclusion of the trial, the court shall find that the allegations in the charging document have or have not been proved beyond a reasonable doubt. The order finding that the allegations of the charging document have been proved shall also state the child's name and date of birth, and the date and county where the offense was committed. The court shall dismiss the charging document if the allegations have not been proved. Findings may be made on the record, but must be followed up in writing within the seven (7) days. For good cause, the court may extend the time for filing written findings for an additional seven (7) days.

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 Minnesota Rules of Juvenile Procedure 15.

Comment—Rule 13

Minn R. Juv 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 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 G.D., 473 N.W.2d 878 (Minn. Ct. App. 1991). State v. Terry, 295 N.W.2d 95 (Minn. 1980).

If the trial has not commenced within thirty (30) days or a continuance has not been granted upon a showing of good cause for a child held in detention, 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.

If the trial is not commenced within sixty (60) days from the date of the demand of a speedy trial and a continuance has not been granted for good cause, the petition shall be dismissed. It is within the trial court's discretion whether it is dismissed with prejudice. See,

Barker v Wingo, 407 U S 614 92 S Ct 2182 33 L Ed 2d 101 (1972) *State v Kasper*, 411 N W 2d 182 (Minn 1987) and *State v Fribert*, 435 N W 2d 509 (Minn 1989)

Minn R Juv P 13 07 is modeled after Minn R Crim P 17 03 subds 2 and 3
Minn R Juv 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

Rule 14 Continuance for Dismissal

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 Minnesota Rules of Juvenile Procedure 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 Minnesota Rules of Juvenile Procedure 13 02, subds 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 could be imposed upon probation after finding that the offenses alleged have been proved.

14 02 Court Approval, Filing of Agreement, Release

All agreements made under Minnesota Rules of Juvenile Procedure 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 Minnesota Rules of Juvenile Procedure 5

14 03 Modification of Agreement

Subject to Minnesota Rules of Juvenile Procedure 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.

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

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

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 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

14 06 Release Status Upon Resumption of Delinquency, Juvenile Petty or Juvenile Traffic Proceedings

If the juvenile proceeding resumes under Minnesota Rules of Juvenile Procedure 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 Minnesota Rules of Juvenile Procedure 5

14 07 Termination of Agreement, Dismissal

If no motion by the prosecuting attorney to terminate the agreement is pending, the agreement is terminated and the charging document shall be dismissed by order of the court one month after expiration of the period of suspension specified by the agreement. If such a motion is then pending, the agreement is terminated and the petition or tab charge 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

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

14 09 Modification or Termination and Dismissal Upon Child's Motion

If, upon motion of the child or 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 Minnesota Rules of Juvenile Procedure 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

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 Minnesota Rules of Juvenile Procedure 13 02, subds 1 and 2

(C) The continuance shall be on conditions provided in Minnesota Rules of Juvenile Procedure 14 01, subdivisions 1 and 2 and shall be subject to limitations stated in Minnesota Rules of Juvenile Procedure 14 01 subd 3

(D) The terms of the continuance may be modified on the record or in writing by the court, with notice to all parties

(E) Proceedings following the continuance shall be governed by Minnesota Rules of Juvenile Procedure 14 04–14 08

(Amended December 12 1997 for all juvenile actions commenced or arrests made on or after 12 00 o'clock midnight January 1, 1998)

Comment—Rule 14

Pursuant to Minn R Juv 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 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

Continuance for dismissal and continuance without adjudication under Minn R Juv P 15 05 subd 4 are not the only options available for dealing with an alleged juvenile offender without formal process. By July 1 1995 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 (Supp 1995). 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 P 14 specifies the procedure to be followed when the child, child's counsel and prosecuting attorney agree to a continuance for dismissal. The rule in no way limits the court's inherent authority to order a continuance for dismissal of its own volition without the agreement of the parties. See, State v Krotzer, 531 N W 2d 862 (Minn Ct App 1995) pet for rev granted (Minn July 20 1995)

Rule 15 Delinquency Disposition

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 Minnesota Rules of Juvenile Procedure 8 04 and findings after trial pursuant to Minnesota Rules of Juvenile Procedure 13 09

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

15 02 Timing

Subdivision 1 Hearing After the court finds that charges in the charging document have been proved, the court may conduct a disposition hearing immediately or continue the matter for a disposition hearing at a later time

Subd 2 Order The court shall enter a dispositional order pursuant to Minnesota Rules of Juvenile Procedure 15 05

(A) within forty–five (45) days from the finding that the charges have been proved for a child not held in detention, or

(B) within fifteen (15) days from the finding that the charges have been proved for a child held in detention

Subd 3 Delay For good cause the court may extend the time period to enter a dispositional order 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 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

Subd 4 Transfer of File If the matter is to be transferred to the child’s county of residence for disposition, the court shall direct the court administrator to transfer the file to 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 260 121 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

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 260 015 subd 5(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 Minnesota Rules of Juvenile Procedure 15 03 subd 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 twenty–four (24) hours prior to the time scheduled for the disposition hearing and the reports shall be available for inspection and copying by the child’s counsel for the child, the prosecuting attorney and counsel for the parent(s), legal guardian or legal custodian of the child

(Amended December 12, 1997 for all juvenile actions commenced or arrests made on or after 12 00 o’clock midnight January 1, 1998)

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 Disposi-

tion hearings shall be conducted in a manner designed to facilitate opportunity for all participants to be heard. The child and counsel for the child, 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 Minnesota Rules of Juvenile Procedure 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.

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 260 185 subd 1 or

(B) continue the case without adjudicating the child delinquent and order a disposition pursuant to Minnesota Statutes section 260 185, subd 1(a) or (b)

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 260.185, subd. 1(c) 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 Minnesota Rules of Juvenile Procedure 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 the protection of the public 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 being held in detention, the court may continue the case without adjudication for a period not to exceed ninety (90) days from the finding that the charges have been proved. The court may extend the continuance for an additional successive period not to exceed ninety (90) days.

(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 finding that the charges in the charging document have been proved. 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 Minnesota Rules of Juvenile Procedure 15.03, subd. 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 260.185, subd. 1(a) or (b).

(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 Minnesota Rules of Juvenile Procedure 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 Minnesota Rules of Juvenile Procedure 15.05, subd. 4 (B) or (C), or juvenile court jurisdiction over the charges terminates.

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 Minnesota Rules of Juvenile Procedure 15.08, subd. 8, the court

may commence a modification proceeding pursuant to Minnesota Rules of Juvenile Procedure 15 08

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 Minnesota Rules of Juvenile Procedure Rule 4 01, or the court may schedule a review hearing and provide notice of the hearing as provided in Minnesota Rules of Juvenile Procedure 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 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) 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 Minnesota Rules of Juvenile Procedure 25

Subd 2 Detention Hearing If the child is detained pursuant to a warrant for immediate custody, detention is governed by Minnesota Rules of Juvenile Procedure 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

(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 Minnesota Rules of Juvenile Procedure 15 07, subd 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* The timing of dispositional orders in Probation Violation matters is governed by Rule 15.02. 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 260.185; or

(2) for a child who was previously granted a continuance without adjudication pursuant to Minnesota Rules of Juvenile Procedure 15.05, subd. 4, adjudicate the child and order a disposition pursuant to Minnesota Statutes, section 260.185.

(Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12:00 o'clock midnight January 1, 1998.)

15.08 Other Modifications

Subdivision 1 Generally Minnesota Rules of Juvenile Procedure 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 affidavits, if any, in accordance with Minnesota Rules of Juvenile Procedure 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 affidavits, if any, whether there is good cause to believe that a modification of the disposition is warranted under Minnesota Rules of Juvenile Procedure 15.08, subd. 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 Minnesota Rules of Juvenile Procedure 15.08, subd. 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 Minnesota Rules of Juvenile Procedure 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

(A) the child has violated the terms of probation or a court order, and

(B) 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

(C) the child or others are in danger of imminent harm, or

(D) 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 Minnesota Rules of Juvenile Procedure 15 04 The moving party bears the burden of proving that modification is warranted under Minnesota Rules of Juvenile Procedure 15 08, subd 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 Minnesota Rules of Juvenile Procedure 15 05 subds 2 and 3

(Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12 00 o'clock midnight January 1 1998)

Comments—Rule 15

Dispositions and revocations for a child who has been designated as extended jurisdiction juvenile are also governed by Minn R Juv P 19 08 and 19 09

Dispositional choices are enumerated in Minnesota Statutes section 260 185 subds 1 and 1a (1994)

Minn R Juv 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 the Welfare of C T T, 464 N W2d 751 753 (Minn Ct App 1991) pet for rev denied (Minn Mar 15, 1991) In re the Welfare of J D K, 449 N W2d 194, 196 (Minn Ct App 1989)

Minnesota Statutes section 260 121 subd 2 (1994) authorizes transfer of a juvenile court file to the child's county of residence This includes files in juvenile delinquency cases and delinquency files include those where the delinquency petition requires commencement of extended jurisdiction juvenile proceedings under Minnesota Statutes section 260 126 (Supp 1995) and Minn R Juv P 19 See Minn R Juv P 19 06 subd 3 When the receiving county has venue because of the child's residence under section 260 121 subd 1 (1994) the statute provides no right of the receiving court to refuse the transfer Upon transfer from the county of the child's residence to another county where the child is found, including the county where the offense occurred the statute provides that the transfer is subject to the consent of the receiving court Under the statute the transferring court is to order a continuance and forward a certified copy of all papers filed together with an order of transfer to the court administrator of the receiving court All subsequent proceedings in the transferred file must occur in the county to which the file has been transferred See Minn R Juv P 19 06, subd 3 As a result in extended juvenile jurisdiction proceedings the receiving court has venue for purposes of the juvenile disposition, the stayed criminal sentence, and any subsequent proceedings for revocation of the stay of sentence Minn R Juv P 19 08 and 19 09 The receiving court may direct the filing of a new petition (or notice to appear in certain cases specified in the statute) or may proceed by accepting prior findings of the transferring court

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 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 260 185 subd 1c (Supp 1995)*

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 the 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))

Although the child and other participants in the disposition hearing have the right to cross-examine the authors of any written report, that does 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 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 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 the 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 P 15 05 subd 1 it should be clear that there can be no appeal of the finding that the allegations of the petition 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 the 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 260 161, subd 1a (a) (1994)

Minnesota Statutes section 260 185, subd 1 (1994) 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 P 15 05, subd 2(A) reiterates the statutory principle

Minn R Juv 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 P 15 05 subd 2(B) is largely derived from Minnesota Statutes section 260 011 subd 2(c) (1994) Minnesota Statutes section 260 185 subd 1 (1994) Minnesota Statutes section 260 185 subd 1c (Supp 1995) In re Welfare of A R W & Y C W, 268 N W 2d 414 417 (Minn 1978) cert den 439 U S 989 (1978) In re the 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 the 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 focussing 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 260 011 subd 2(c) (1994) 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 260 185 subd 1 (1994) 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 developed 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 P 15 05 subd 3 provides that a dispositional order that transfers legal custody of the child under Minnesota Statutes section 260 185 subd 1(c) (1994) shall be for a specified length of time See Minnesota Statutes section 260 185 subd 4 (1994)

The duration of a disposition that transfers custody of the child to the Commissioner of Corrections pursuant to Minnesota Statutes section 260 185 subd 1(d) (1994) is determined by the Commissioner See, In re the Welfare of M D A v State, 237 N W 2d 827 (Minn 1975)

Withholding of adjudication has been redesignated as continuance without adjudication to conform with the statutory language of Minnesota Statutes section 260 185 subd 3 (1994) Continuance without adjudication is authorized by Minnesota Statutes section 260 185 subd 3 The court must find that the allegations of the petition 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 (1994) Because Minnesota Statutes, section 260 185 subd

3 requires a finding that the juvenile committed the offense alleged in the petition 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 443 (1985) Continuance without adjudication may prevent the operation of some statutes which will require that the child be adjudicated delinquent *See, e.g.*, Minnesota Statutes, section 609 3461 subd 1(3) (1994) (provision of biological specimens for DNA analysis) and, for offenses committed before August 1 1996 Minnesota Statutes section 260 161 subd 1a(a) (1994) and 1996 Minn Laws Ch 440 Art 1 Sec 46 (report of certain juvenile offenses to BCA)

Continuance without adjudication and continuance for dismissal under Minn R Juv P 14 are not the only options available for dealing with an alleged juvenile offender without formal process By July 1, 1995 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 (Supp 1995) 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

Statutory law requires an administrative review of all placements in a residential facility (group home family foster home or other publicly supported out-of-home residential facility) every six months Minnesota Statutes section 257 071 subd 2 (1994)

Much of Minn R Juv P 15 07 was taken from Minn R Crim P 27 04

Unless all the parties agree to a proposed modification the court may not order the modification of the disposition after an informal review without commencing a modification proceeding pursuant to Minn R Juv P 15 08 in order to give the parties an opportunity to contest the proposed modification before it is imposed

Under Minn R Juv 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

Minnesota Statutes section 260 145 (1994) addresses the court's authority to issue a warrant for immediate custody for the child Minnesota Statutes section 260 165 subd 1(d) (1994) 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 P 3 02 subd 4

Rule 16 Post-Trial Motions

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

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 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 finding that the allegations of the charging document are proved. The motion shall be heard within thirty (30) days after the finding that the allegations of the charging document are proved 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 When a motion for new trial is based on affidavits, 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 affidavits. The period may be extended by the court upon an order extending the time for hearing under this rule. The court may permit reply affidavits.

16 02 Motion to Vacate the Finding That the Allegations of the Petition or 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.

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.

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 Minnesota Rules of Juvenile Procedure 16 01, subd. 1, within fifteen (15) days after the finding that the allegations of the charging document are proved and with the consent of the child.

Comment—Rule 16

References to child counsel includes the child who is proceeding pro se
Minn R Juv P 1 01

Minn R Juv 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 a new trial based on the grounds of new evidence. Minnesota Statutes, section 260 281 provides for a different time for filing a motion for new trial which is premised on the discovery of new evidence. 1996 Minnesota Laws Ch. 408 Art. 6 Sec. 9. 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. 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

17.01 Scope, Application and General Purpose

Minnesota Rules of Juvenile Procedure 17 applies to children alleged to be juvenile petty offenders as defined by Minnesota Statutes, section 260.015, subd. 21 or juvenile traffic offenders as defined by Minnesota Statutes, section 260.193. The purpose of Minnesota Rules of Juvenile Procedure 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.

Subdivision 1 Juvenile Petty Offender A juvenile petty offender is a child who has committed a juvenile petty offense.

(A) *Juvenile Petty Offense* A juvenile petty offense is

- (1) a juvenile alcohol offense
- (2) a juvenile controlled substance offense,
- (3) a juvenile tobacco offense
- (4) a violation of local ordinance which prohibits conduct by a child under age eighteen (18)
- (5) a non-traffic misdemeanor-level offense except for the following
 - (a) criminal contempt (Minnesota Statutes, section 588.20)
 - (b) fifth-degree assault (Minnesota Statutes, section 609.224)
 - (c) domestic assault (Minnesota Statutes, section 609.2242)
 - (d) prostitution, soliciting/hiring a prostitute (Minnesota Statutes, section 609.324),
 - (e) third-degree arson (Minnesota Statutes, section 609.563)
 - (f) negligent fires, dangerous smoking (Minnesota Statutes, section 609.576)
 - (g) dangerous weapons (Minnesota Statutes, section 609.66), or
 - (h) indecent exposure (Minnesota Statutes, section 617.23)

(B) *Excluded* The following are not juvenile petty offenses:

- (1) a traffic offense,
- (2) a misdemeanor-level offense if the juvenile court previously found that the child committed a misdemeanor, gross misdemeanor or felony, or
- (3) a misdemeanor-level offense if the juvenile court previously found that the child committed two or more prior misdemeanor-level juvenile petty offenses on or after July 1, 1995.

(C) *Designation as Juvenile Petty Offender by Prosecuting Attorney* The prosecuting attorney may designate a child a juvenile petty offender despite the child's history of misdemeanor-level offenses under Minnesota Rules of Juvenile Procedure 17.01, subd. 1(B)(3).

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 set forth below in Minnesota Rules of Juvenile Procedure 17.01, subd. 3.

(A) *Traffic Offense* 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.

Subd 3 Children Under Jurisdiction of Adult Traffic Court A sixteen (16) or seventeen (17) year–old child alleged to have committed one of the following offenses is under the jurisdiction of adult criminal court

(A) a violation of Minnesota Statutes section 169 121 (drivers under the influence of alcohol or controlled substance) or Minnesota Statutes, section 169 129 (aggravated driving while intoxicated) or any other misdemeanor and gross misdemeanor level traffic violations committed as part of the same behavioral incident, or

(B) a petty traffic misdemeanor which is not a part of the same behavioral incident of a misdemeanor being handled in juvenile court

17 02 Attendance at Hearings and Privacy

Governed by Minnesota Rules of Juvenile Procedure 2 (“Attendance at Hearings and Privacy”) except that the court may not exclude a child charged with a juvenile petty or juvenile traffic offense from a hearing or any portion of a hearing on the grounds that it is the child’s best interests unless the child is represented by counsel

17 03 Right to Counsel

Subdivision 1 Generally A child alleged to be a juvenile petty offender or a juvenile traffic offender has the right to be represented by an attorney at any point throughout the proceedings but does not have the right to counsel at public expense except

(A) at a detention hearing,

(B) in a proceeding to determine whether the child is competent to proceed,

(C) where a child charged with a misdemeanor offense is designated a juvenile petty offender by the prosecuting attorney as set forth in Minnesota Rules of Juvenile Procedure 17 01, subd 1(C)

(D) where out–of–home placement is a possible disposition such as under Minnesota Statutes section 260 195, subd 4 for a child appearing on a third or subsequent juvenile alcohol or controlled substance offense If the child is not represented by counsel, out–of–home placement is prohibited

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 Minnesota Rules of Juvenile Procedure 21 02 subd 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 (Amended December 12 1997, for all juvenile actions commenced or arrests made on or after 12 00 o clock midnight January 1 1998)

17 04 Warrants

Governed by Minnesota Rules of Juvenile Procedure 4 (“Warrants”) except that 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 260 015, subd 21 or a juvenile traffic offense as defined by Minnesota Statutes, section 260 193 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

17 05 Detention

Governed by Minnesota Rules of Juvenile Procedure 5 (“Detention ”)

17 06 The Charging Document and Notice of Arraignment

A child shall be charged as a juvenile petty offender or juvenile traffic offender pursuant to Minnesota Rules of Juvenile Procedure 6 (“Charging Document”) with proper notice given pursuant to Minnesota Rules of Juvenile Procedure 25 (“Notice”). The time for an arraignment shall be the same as that for a delinquency proceeding.

17 07 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 Minnesota Rules of Juvenile Procedure 17 08.

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 Minnesota Rules of Juvenile Procedure 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 within twenty (20) days after the child has been served with 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 but not the right to the 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 260 195, subs 3, 3a and 4 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 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 260 193, subd 8 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.

17 08 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 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,
 - (7) the right to subpoena witnesses,
 - (8) that the child's conduct constitutes the act admitted,
- (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 Minnesota Rules of Juvenile Procedure 17 10

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 or
- (B) at any time 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 a 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 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, the court shall schedule further proceedings pursuant to Minnesota Rules of Juvenile Procedure 17 14 ("Adjudication and Disposition")

17 09 Settlement Discussions and Plea Agreements

Governed by Minnesota Rules of Juvenile Procedure 9 ("Settlement Discussions and Plea Agreements")

17 10 Discovery

At the court's discretion, discovery may be conducted in the manner provided for delinquency proceedings pursuant to Minnesota Rules of Juvenile Procedure 10 ("Discovery")

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.

17 11 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 Minnesota Rules of Juvenile Procedure 11 ('Pretrial Conference ') and Minnesota Rules of Juvenile Procedure 12 (' Omnibus Hearing ')

17 12 Trial

The trial shall be held within the times and in the manner required for a delinquency proceeding as set forth in Minnesota Rules of Juvenile Procedure 13 (' Trials ')

17 13 Continuance for Dismissal

Governed by Minnesota Rules of Juvenile Procedure 14 ("Continuance for Dismissal")

17 14 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 260 195, subs 3, 3a and 4

(B) *For a Juvenile Traffic Offender* Adjudicate the child a juvenile traffic offender and order a disposition pursuant to Minnesota Statutes, section 260 193 subd 8

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.

Subd 3 Probation Revocation Probation revocation proceedings shall be conducted in the same manner as delinquency probation violation proceedings pursuant to Minnesota Rules of Juvenile Procedure 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 appointed at public expense,

(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 260 195 subd 3 3a or 4 for a juvenile petty offender or a disposition pursuant to Minnesota Statutes section 260 193, subd 8 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 Minnesota Rules of Juvenile Procedure 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 260 195 subds 3 3a and 4 and for a juvenile traffic offender the court may order a disposition pursuant to Minnesota Statutes section 260 195, subd 8 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

17 15 Post-Trial Motions

Governed by Minnesota Rules of Juvenile Procedure 16 (Post-trial Motions)

17 16 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 it 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 forwarding 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 shall proceed with the case as if it had never been in juvenile court

17 17 Child Incompetent to Proceed

If a child is believed to be incompetent to proceed the court may either proceed according to Minnesota Rules of Juvenile Procedure 20 (Child Incompetent to Proceed) direct that Child in Need of Protection or Services (CHIPS) proceedings be initiated or dismiss the case

17 18 Appeals

Governed by Minnesota Rules of Juvenile Procedure 21 (Appeals)

17 19 General Application of Other Rules

Minnesota Rules of Juvenile Procedure 22 through 31 apply to juvenile petty and juvenile traffic matters

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 includes 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 applies 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 includes

- (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' includes 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 applies to crimes committed on or after August 1, 1996 1996 Minn Laws Ch 408 Art 6 Sec 13 Minn R Juv P 17 01 subd 1 reflects the definition of juvenile petty offense set forth pursuant to 1996 Minn Laws Ch 408 Art 6 Sec 1

Minnesota Statutes section 260 193 subd 2 (1994) 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 Minnesota Statutes section 260 193 subd 2 (1994) Such matter shall be initiated and shall proceed in the same manner as any other delinquency Id

At the arraignment the court may inform the child(ren) of their rights and the possible consequences by reading and having each child sign a sheet outlining their rights A suggested form for this rights sheet is included in the appendix of forms following these rules

Minn R Juv P 17 16 is based on Minnesota Statutes, section 260 193 subd 7 (1994) 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 260 291 (Supp 1995)

Rule 18 Certification of Delinquency Matters

18 01 Initiation of Certification Proceedings of Delinquency Matters

Proceedings to certify delinquency matters pursuant to Minnesota Statutes section 260 125 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 Minnesota Rules of Juvenile Procedure 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 Minnesota Rules of Juvenile Procedure 27 and shall include a statement of the grounds supporting the certification. Within ten (10) days after the motion is made the prosecuting attorney shall file with the court a statement of intent to prosecute the accusation if the proceedings are certified which statement shall be signed by the prosecutor in the county which has jurisdiction over the offense. The court shall dismiss the certification motion if the statement of intent to prosecute is not timely filed.

18 02 Notice of Certification

Notice of the initial appearance under Minnesota Rules of Juvenile Procedure 18 04 subd 2 together with a copy of the motion for certification and a copy of the delinquency petition shall be served pursuant to Minnesota Rules of Juvenile Procedure 25.

18 03 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 Minnesota Rules of Juvenile Procedure 19 05, subd 3, and (b) the report shall address all options of the trial court under Minn R Juv P 18 06, namely, (i) certification, (ii) retention of jurisdiction for extended jurisdiction juvenile proceedings and (iii) retention of juvenile court jurisdiction in nonpresumptive 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 prior to the time scheduled for the hearing. The reports shall otherwise be confidential.

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 regarding the issue of guilt in any subsequent trial.

18 04 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 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 Minnesota Rules of Juvenile Procedure 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, 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 Minnesota Rules of Juvenile Procedure 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 Minnesota Rules of Juvenile Procedure 18.04, subd. 4, and a pre-hearing conference if requested; and

(F) order studies pursuant to Minnesota Rules of Juvenile Procedure 18.03, 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 Minnesota Rules of Juvenile Procedure 18.05, subd. 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 Minnesota Rules of Juvenile Procedure 18.05, subd. 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 Minnesota Rules of Juvenile Procedure 18.05, subd. 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

18.05 Certification Determination

Subdivision 1 Presumption of Certification Pursuant to Minnesota Statutes section 260.125, subdivision 2a (1994) 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 16 or 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 Minnesota Rules of Juvenile Procedure 18.04 subd. 3

The presumption of certification is overcome if it is rebutted by the child's showing of clear and convincing evidence demonstrating 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, either in the exercise by the court of its delinquency jurisdiction or in its jurisdiction over extended jurisdiction juvenile cases and

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

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

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 260.125 subd 3a

Subd 5 Extended Juvenile Court Jurisdiction

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

(B) *Non-presumptive Certification* If the court does not order certification in a case in which certification is not presumed 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 Minnesota Rules of Juvenile Procedure 18.05 subd 3 Absent this showing the case shall proceed as a regular delinquency proceeding in juvenile court

18.06 Order

Subdivision 1 Decision, Timing, Content of Order Within fifteen (15) days of the hearing the court shall enter an order with written findings of fact and conclusions of law

(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 Minnesota Rules of Juvenile Procedure 18.04, subd 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 Minnesota Rules of Juvenile Procedure 18.05 subd 1 or if the presumption of certification does not apply but the court orders certification why public safety as defined in Minnesota Rules of Juvenile Procedure 18.05 subd 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 Minnesota Rules of Juvenile Procedure 18 07) without unnecessary delay and in any event not more than 36 hours after issuance of the certification order, exclusive of the day of issuance, 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 case where the presumption of certification applies, the court shall designate the proceeding an extended jurisdiction juvenile case. The order shall state why certification is not ordered with specific reference to why designation as an extended jurisdiction juvenile serves public safety under the factors listed in Minnesota Rules of Juvenile Procedure 18 05, subd 3

(2) If the court does not order certification in a case where the presumption of certification does not apply the court may designate the proceeding an extended jurisdiction juvenile case pursuant to Minnesota Rules of Juvenile Procedure 18 05, subd 5(B). The order shall state why certification was not ordered and why the proceeding was designated extended jurisdiction juvenile

If the court designates the case as an extended jurisdiction juvenile proceeding the case shall proceed pursuant to Minnesota Rules of Juvenile Procedure 19 07

(C) Retention of Jurisdiction by Juvenile Court If the court decides not to order certification or extended jurisdiction juvenile, the order shall state why certification or extended jurisdiction juvenile was not ordered with specific reference to why retention of the matter in juvenile court serves public safety, considering the factors listed in Minnesota Rules of Juvenile Procedure 18 05, subd 3. Further proceedings shall be held pursuant to Minnesota Rules of Juvenile Procedure 7

(D) Time Spent in Custody Upon ordering certification or retention as an extended jurisdiction juvenile proceeding the court shall designate the time spent by the child in custody in connection with the offense or behavioral incident on which further proceedings are to occur. Such time shall be automatically deducted from a subsequent sentence in compliance with the provisions of Minnesota Rules of Criminal Procedure 27 03 subd 4(B)

Subd 2 Delay For good cause, the court may extend the time period to file its order for an additional fifteen (15) days. If the order is not entered 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 Minnesota Rules of Juvenile Procedure 5

Subd 3 Final Order This order shall constitute a final order

18 07 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 Minnesota Rules of Juvenile Procedure 18 06, subd 1(A)(4)

(B) If the alleged offense was committed in a county other than where certification is ordered juvenile court jurisdiction terminates in ten (10) days or before if the prosecuting attorney files a complaint as provided under Minnesota Rules of Criminal Procedure 2. If juvenile court jurisdiction has terminated under this subsection before an appearance of a detained child following issuance of an order certifying the case the appearance shall constitute a first appearance in criminal proceedings as provided in the Minnesota Rules of Criminal Procedure. If juvenile court jurisdiction has not terminated by the time a detained juvenile

first appears following issuance of an order certifying the juvenile court shall determine conditions of release in accordance with the provisions of Minnesota Rules of Criminal Procedure 5 05 and 6, for these purposes the juvenile court petition shall serve in lieu of a criminal complaint as the charging instrument

Subd 3 Stay Notwithstanding the preceding provisions of subdivisions 1 and 2, certification and the termination of juvenile court jurisdiction may be stayed as provided in Minnesota Rules of Juvenile Procedure 21 03, subd 3

18 08 First Degree Murder Accusation

Subdivision 1 Child Ages 16 or 17 Upon the filing of a complaint or indictment charging a 16 or 17 year old child in adult proceedings with the offense of first degree murder, juvenile court jurisdiction terminates all proceedings arising out of the same behavioral incident

Subd 2 Child Under Age 16 When a motion for certification has been filed in a case in which the juvenile petition alleges that a child under age 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

Comment—Rule 18

The 1983 juvenile rules contemplate bringing a petition for reference (now certification) after a petition for delinquency has been filed but before the arraignment occurs. In re Welfare of J G B, 443 N W 2d 867 871 (Minn Ct App 1989) (reference petition after arraignment was reason for delay that weighed against prosecution in speedy trial analysis)

Pursuant to Minnesota Statutes, section 260 125, subd 3b (1994) 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 260 131 and 628 26 (Supp 1995) 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. See, also In the Matter of the Welfare of A N J, 521 N W 2d 889 (Minn Ct App 1994) Juvenile court retains jurisdiction to hear a reference 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

The statement of intent to prosecute in Minn R Juv P 18 01 may be included in the motion for certification if the county which has jurisdiction over the offense is the same county where the motion for certification is filed

Much of the text of Minn R Juv P 18 04 subd 1(A) is taken from Minnesota Statutes section 260 155 (1994)

The sanction for delay in Minn R Juv P 18 04 subd 1(B) and 18 06 subd 2 is modeled after Minn R Crim P 11 10. See, In re Welfare of J J H, 446 N W 2d 680 681–82 (Minn Ct App 1989) (order issued 66 days after hearing 38 days after submission of written argument, because rule contains no sanction, reversal denied) See also, McIntosh v Davis, 441 N W 2d 115 (Minn 1989) (where alternative remedies available mandamus not appropriate to enforce time limit of Minn R Crim P 11 10 speedy trial rule)

On continuation questions under Minn R Juv P 18 04 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 P 18 04, subd 1(C) is taken from the 1983 version of Minn R Juv P 15 03

Minn R Juv P 18 04 subd 2(B) requires a determination on appearances of necessary persons. Under Minnesota Statutes section 260 155 subd 4b (1994) 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 260 145 (1994)

Much of the content of Minn R Juv P 18 04 subd 3 is modeled after Minn R Crim P 11 03 and 18 06 subd 1 The court may employ police statements for probable cause determinations in the same manner as permitted in adult proceedings under Minn R Crim P 11 03 Also note *In re Welfare of E YW*, 496 N W 2d 847 850 (Minn Ct App 1993) (juvenile not entitled to exclusionary hearing before decision on probable cause)

Minn R Juv P 18 04 subd 3 and 18 06 subd 1(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 260 015 subd 5 (1994) Minn R Juv P 18 04 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 P 18 04 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)

Following presentation of evidence by the party with the burden of proof under Minn R Juv P 18 04 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 P 18 05 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

Under Minnesota Statutes sections 260 111 subd 1a 260 015, subd 5(b) and 260 125 subd 7 (1994) 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 As a result, the prosecuting attorney can initiate a first degree murder accusation in adult court proceedings

Minn R Juv P 18 08 subd 2 repeats the procedural requirement stated in Minnesota Statutes section 260 125 subd 6 (1994)

Rule 19 Extended Jurisdiction Juvenile Proceedings and Prosecution

19 01 Initiation of Extended Jurisdiction Juvenile Proceedings

Subdivision 1 Authority Extended jurisdiction juvenile proceedings are initiated pursuant to Minnesota Statutes, section 260 126 and Minnesota Rules of Juvenile Procedure 19 Jurisdiction of the juvenile court may continue until the child's twenty-first (21st) birthday

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 260 185 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

(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

Subd 3 Designation by Prosecuting Attorney The court shall commence an extended jurisdiction juvenile proceeding when a delinquency petition filed pursuant to Minnesota Rules of Juvenile Procedure 6

(A) alleges a felony offense committed after the child's sixteenth (16th) birthday and would, if committed by an adult, be 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 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 Minnesota Rules of Juvenile Procedure 27 to have the court commence an extended jurisdiction juvenile proceeding when a delinquency petition has been filed pursuant to Minnesota Rules of Juvenile Procedure 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 Minnesota Rules of Juvenile Procedure 5 and 7 or before jeopardy attaches, whichever of the later two occurs first.

19 02 Notice of the Extended Jurisdiction Juvenile Proceeding

A notice of the initial appearance under Minnesota Rules of Juvenile Procedure 19 04 subd 2 together with a copy of the petition and designation or a copy of the motion and petition, shall be served pursuant to Minnesota Rules of Juvenile Procedure 25

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 Minn R Juv P 19 05 that is germane to the case

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 prior to the time scheduled for the hearing. The report shall otherwise be confidential

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

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 16 years of age at the time of the offense, except that the court may exclude the public from por-

tions 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 extended jurisdiction juvenile proceeding hearing shall be held within thirty (30) days of

(1) the filing of the petition designating an extended jurisdiction juvenile prosecution or

(2) 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 a 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 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 Minnesota Rules of Juvenile Procedure 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 prosecution or the filing of the extended jurisdictional juvenile proceedings motion. The court may, on the record, extend this time for good cause. If witnesses are to be called the court may continue the hearing

(B) At the initial appearance hearing the court shall

(1) verify the name age race 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 hearing required by Minnesota Rules of Juvenile Procedure 19 04 subd 4 and a pre-hearing conference if requested and

(6) order studies pursuant to Minnesota Rules of Juvenile Procedure 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 prosecution 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 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 Minnesota Rules of Juvenile Procedure 19 07

(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 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 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 confirming 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 Minnesota Rules of Juvenile Procedure 19.05.

(Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12:00 o'clock midnight January 1, 1998.)

19.05 Extended Jurisdiction Juvenile Prosecution Determination

The court may order a case to proceed as an extended jurisdiction juvenile prosecution if the public safety would be served, taking 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 or 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,

(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.

19.06 Order

Subdivision 1 Decision, Timing, Content of Order Within fifteen (15) days of the hearing the court shall enter an order, with written findings of fact and conclusions of law. If

the motion is granted further proceedings shall be held in juvenile court pursuant to the Minnesota Rules of Criminal Procedure except as modified by these rules. If the motion is denied further proceedings shall be held pursuant to Minnesota Rules of Juvenile Procedure 7.

Subd 2 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 Minnesota Rules of Juvenile Procedure 5.

Subd 3 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 over 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 260.121. The receiving court thereafter has venue for purposes of all proceedings under Minn R Juv P 19.08 (disposition and sentencing upon conviction in extended jurisdiction juvenile proceedings) and 19.09 (revocation of stay of adult criminal sentence).

Subd 4 Final Order This order shall constitute a final order.

19.07 Extended Jurisdiction Juvenile Prosecution

Every child subject to extended jurisdiction juvenile prosecution is entitled to trial by jury 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 Minnesota Rules of Juvenile Procedure 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 days of the prosecution motion for EJJ designation, the trial shall be scheduled within 60 days of the court's order designating the child an extended jurisdiction juvenile, or if the hearing on the motion to designate the child as an extended jurisdiction juvenile is commenced more than thirty days from the filing of the motion, the trial, for a child in detention, shall be commenced within thirty days of entry of the court's order designating the child an extended jurisdiction juvenile.

(Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12:00 o'clock midnight January 1, 1998.)

19.08 Disposition

Subdivision 1 Guilty Plea or Conviction Guilty pleas shall be made on the record and pursuant to Minnesota Rules of Criminal Procedure 15. Upon a guilty plea or conviction, the court shall:

(A) order one or more dispositions under Minnesota Statutes section 260.185, 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 subd. 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 Minnesota Rules of Juvenile Procedure 19.09, 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 Minnesota Rules of Juvenile Procedure 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 260.185. But if the child has plead 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 Minnesota Rules of Juvenile Procedure 19.08, subd. 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 260.121. 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 prior to making the transfer the transferring court shall prepare and file with the receiving court a copy of the juvenile's file, including any plea and sentencing transcript.

Subd. 5 Record of Proceedings. Upon a plea of guilty after a child has been determined to be an Extended Jurisdiction Juvenile any verbatim record made of the plea and sentencing proceedings shall be transcribed and filed with the court administrator within 30 days after the date of sentencing. Where venue is transferred as provided in Subd. 4 the transcript shall be immediately prepared and filed with the transferring court.

(Amended December 12, 1997 for all juvenile actions commenced or arrests made on or after 12:00 o'clock midnight January 1, 1998.)

19.09 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 child if the court finds that there is probable cause to believe that

(A) the child has violated the terms of probation or a court order and

(B) 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

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

(D) the child 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, the signature of the issuing judge or judicial officer of the district court, and shall be accompanied by the written report upon which it was based. The amount of any bail or other conditions of release may be set by the issuing judge or judicial officer and endorsed 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;

(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 will 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 Minnesota Rules of Juvenile Procedure 5 and Minnesota Rules of Criminal Procedure 6.02, subds. 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 Minnesota Rules of Juvenile Procedure 19.09, subd. 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 order any of the adult sanctions authorized by Minnesota Statutes section 609 14, subd 3

(2) 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 and the extended jurisdiction juvenile conviction was for an offense with a presumptive prison sentence or the probationer used a firearm, the court shall order the execution of the sentence or make written findings indicating the mitigating factors that justify continuing the stay

(D) *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

(E) *Appeal* The probationer or the prosecuting attorney may appeal from the court's decision according to the procedure provided for appeal from a sentence by the Minnesota Rules of Criminal Procedure 28 05

(F) Any verbatim record of Extended Jurisdiction Juvenile probation revocation hearings shall be transcribed and filed with the court administrator within 30 days of the date of sentencing

(Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12 00 o'clock midnight January 1, 1998)

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 P 19 04, subd 1(B) and 19 06 subd 2 is modeled after Minn R Crim P 11 10 See, in re Welfare of J J H., 446 N W 2d 680 681–82 (Minn Ct App 1989) (order issued 66 days after hearing, 38 days after submission of written argument because rule contains no sanction, reversal denied) See also, McIntosh v Davis, 441 N W 2d 115 (Minn 1989) (where alternative remedies available mandamus not appropriate to enforce time limit of Minn R Crim P 11 10 speedy trial rule)

Most of the waiver language in Minn R Juv P 19 04, subd 1(C) is taken from the 1983 version of Minn R Juv P 15 03

Minn R Juv 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), or by way of impeachment 2nd State v Christenson, 371 N W 2d 228 (Minn Ct App 1985) cf Harris v New York, 401 U S 222 (1971)

On continuation questions under Minn R Juv P 19 04 subd 1(B) the victim should have input but does not have the right of a party to appear and object

Much of the content of Minn R Juv P 19 04 subd 3 is modeled after Minn R Crim P 11 03 and 18 06, subd 1 The court may employ police statements for probable cause determinations in the same manner as permitted in adult proceedings under Minn R Crim P 11 03 Also note, In re Welfare of E Y W., 496 N W 2d 847 850 (Minn Ct App 1993) (juvenile not entitled to exclusionary hearing before decision on probable cause)

Minn R Juv 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 grant 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 260 015, subd 5 (1994)

Minn R Crim P 19 04, subd 4(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

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 260 155 subd 4b (1994) 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 260 145 (1994)

Pursuant to Minnesota Statutes section 260 215 (1994) 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

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 (1994) 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)

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

20 01 Proceeding when Child is Believed to be Incompetent

Subdivision 1 Competency to Proceed Defined

(A) A child shall not be permitted to waive counsel if the child lacks sufficient ability to

- (1) knowingly, voluntarily and intelligently waive the constitutional right to counsel,
- (2) appreciate the consequences of the decision to proceed without representation by counsel,
- (3) comprehend the nature of the charge and proceedings the range of applicable punishments, and any additional matters essential to a general understanding of the case

(B) A child shall not be permitted to enter a plea or be tried or sentenced for any offense if the child lacks sufficient ability to

- (1) consult with a reasonable degree of rational understanding with defense counsel, or
- (2) understand the proceedings or participate in the defense due to mental illness or mental deficiency

The court may not proceed under this rule before the child consults with counsel and the child s counsel has an opportunity to be heard by the court Any child subject to competency proceedings shall be represented by counsel

Subd 2 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* If the offense is a felony 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 gross misdemeanor 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) *Medical 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 Chapter 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 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 at least sixty (60) days the examiner shall send a written report to the judge who ordered such examination, 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 mentally deficient, 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.

(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 deficiency.

Subd 3 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 on the issue of the child's competency to proceed.

(B) *Going Forward with Evidence* If the defense moved for the examination, the defense 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 defense 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 defense 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 an order finding competency. Otherwise, the court shall enter an order finding incompetency.

Subd 4 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 gross misdemeanor, misdemeanor, petty matter, 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 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 Minnesota Rules of Juvenile Procedure 20.01, subd. 6.

(1) If the court determines that the child is mentally ill or deficient 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 and 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 5 Continuing Supervision by the Court in Felony Cases. The person charged with the child's supervision, such as the head of the institution to which the child is committed, shall report to the trial court on the child's mental condition and competency to proceed at least every six (6) months unless otherwise ordered. Copies of the reports shall also be sent to the prosecuting attorney and to the child's counsel.

Unless the petition against the child has been dismissed as provided by Minnesota Rules of Juvenile Procedure 20.01, subd. 6, 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 6 Dismissal of Proceedings

(A) Delinquency and extended jurisdiction juvenile proceedings shall be dismissed upon the earlier of the following:

(1) the child's nineteenth (19th) birthday in the case of a delinquency or twenty-first (21st) 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 Minnesota Rules of Juvenile Procedure 20.01, subd. 6(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 7 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 8 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 December 12 1997, for all juvenile actions commenced or arrests made on or after 12 00 o'clock midnight January 1 1998)

20 02 Defense of Mental Illness or Mental Deficiency at the Time of the Offense

Subdivision 1 When Raised

(A) If the child intends to raise mental illness or mental deficiency as a defense the child shall advise the court and prosecuting attorney in writing at 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 mental deficiency 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 mental deficiency is raised, the court shall order an examination as described in Minnesota Rules of Juvenile Procedure 20 01 subd 2(C) The court may order that the examination for competency under Minnesota Rules of Juvenile Procedure 20 01 and the Minnesota Rules of Juvenile Procedure 20 02 examination 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 prohibit the child from introducing evidence of the child's mental illness or mental deficiency, may strike any such evidence previously introduced, may 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 may make any such other ruling as it deems just

Subd 4 Disclosure of Reports and Records of Child's Mental Illness or Mental Deficiency Examinations

(A) *Order for Disclosure* If a child raises the defense of mental illness or mental deficiency 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 mental deficiency of the child and relevant to the issue of the defense of mental illness or mental deficiency If the copies of the reports and records are furnished to the court 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 mental deficiency

Subd 5 Report of Examination At the conclusion of the examination, a written report of the examination shall be forwarded to the judge who ordered the examination the

prosecuting attorney and to the child's counsel. The contents of the report shall not otherwise be disclosed except as ordered by the court. The report of the examination shall contain:

(A) A diagnosis of the child's mental illness or mental deficiency as requested by the court,

(B) If so directed by the court, an opinion as to whether because of mental illness or deficiency, 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.

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 deficiency.

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 mental deficiency an issue in the case. If the child's mental illness or mental deficiency 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 Minnesota Rules of Juvenile Procedure 20 01 or Minnesota Rules of Juvenile Procedure 20 02, or both, 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 Mental Deficiency* If a child notifies the court and prosecuting attorney under Minnesota Rules of Juvenile Procedure 20 02, subd. 1 of an intention to rely solely on the defense of mental illness or deficiency, 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 Minnesota Rules of Juvenile Procedure 20 02, subd. 1 of an intention to rely on the defense of mental illness or deficiency 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 deficiency.

(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 mental deficiency.

(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 Minnesota Rules of Juvenile Procedure 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 mental deficiency, the defense of mental illness or mental deficiency shall then be tried and determined by the court. The child shall have the burden of proving the defense of mental illness or mental deficiency 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 mental deficiency, or
- (c) guilty.

The court shall enter findings pursuant to Minnesota Rules of Juvenile Procedure 13 09

(2) Extended Jurisdiction Juvenile Proceedings A court trial in an extended jurisdiction juvenile proceeding shall be conducted pursuant to Minnesota Rules of Juvenile Procedure 20 02, subd 7(D)(1) A jury trial in an Extended Jurisdiction Juvenile Proceeding shall be conducted pursuant to Minnesota Rules of Criminal Procedure 20 02 subd 6(4)

Subd 8 Procedure After Hearing

(A) *Mental Illness or Mental Deficiency Not Proven* After a finding of guilty and the defense of mental illness or deficiency not proven the court shall schedule and conduct a disposition hearing The issues of the child's mental illness or deficiency shall be considered by the court at disposition

(B) *Mental Illness or Mental Deficiency Proven* When a child is found not guilty by reason of mental illness or mental deficiency,

(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

Comment — Rule 20

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

Under Minn R Juv P 20 01 subd 2(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 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 260 251 subd 1(3) (1994)

Rule 21 Appeals

21 01 Generally

This rule governs the procedure for appeals from juvenile traffic and juvenile petty delinquency extended jurisdiction juvenile 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

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

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 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

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 Minnesota Rules of Juvenile Procedure 21 03, subd 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, subd 3 A motion for a new trial is not necessary in order to appeal

The court shall notify a child of the right to appeal in any case where it issues a final order A child may combine an appeal from a sentence or a disposition with an appeal from a judgment of conviction or an order for adjudication The court shall not determine whether an offense will be adjudicated or continued without adjudication until the time of disposition

Appeals from disposition or sentence shall only include matters which arose after adjudication or conviction The court may review any other matter as the interests of justice require In addition to all powers of review presently existing, the court may review the sentence or disposition to determine whether it is consistent with the standards set forth in Minnesota Rules of Juvenile Procedure 15 05, subds 2 and 3

(A) *Final Orders* Final orders include orders for

- (1) certification to adult court, whether the order is entered or stayed pursuant to Minnesota Rules of Juvenile Procedure 21 03, subd 3
- (2) continuance without adjudication and disposition in delinquency proceedings pursuant to Minnesota Statutes, section 260 185 subd 1(a) or (b)
- (3) adjudication and disposition in delinquency proceedings pursuant to Minnesota Statutes, section 260 185, subd 1,
- (4) adjudication and disposition in juvenile petty or juvenile traffic offender proceedings
- (5) denial of motion for new trial or rehearing
- (6) determination as an extended jurisdiction juvenile prosecution,
- (7) conviction 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 and
- (10) an order revoking probation including an order adjudicating a child delinquent after the child was granted a continuance without adjudication and 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) *Time for Taking an Appeal* An appeal shall be taken within thirty (30) days after the filing of the order appealed from

(B) *Notice of Appeal and Filing* The appellant shall file the following documents with the clerk of the appellate courts

- (1) 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
- (2) proof of service of notice of appeal on the adverse party, the district court administrator, and the court reporter

(3) a certified copy of the judgment or order appealed from and

(4) two copies of 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, district 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, district court administrator and court reporter where the disposition was ordered. Proof of service of notice of appeal on all of these 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 subd. 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.

(C) *Transcript of Proceedings and Transmission of the Transcript and Record* The Minnesota Rules of Civil Appellate Procedure shall govern the transcript of the proceedings and the transmission of the transcript and record to the court of appeals except as modified here.

(1) Within ten 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.

(2) For parties represented by the state public defender payment for transcripts will be made after receipt of the transcripts.

(3) Any videotape or audiotape exhibits admitted at trial or hearing shall be transcribed at the request of either party and shall be included as part of the record.

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

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

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

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

(4) 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 trial court or the court of appeals. A motion for stay initially shall be presented to the trial court.

In cases certified to adult court, the district court shall stay further adult criminal proceedings, and may stay certification orders pending the filing of a final decision on appeal. By agreement of the parties, the adult case may proceed through the omnibus hearing.

If a stay is granted conditions of release must be set pursuant to Minnesota Rules of Juvenile Procedure 21.03, subd. 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 Statutes, section 260.171.

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 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 papers, affidavits, 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 Minnesota Rules of Juvenile Procedure 21.03, subd. 3 of this rule, Minnesota Statutes, section 260.171 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 court shall make written findings on each of the above factors. The 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 court in determining the disposition imposed in juvenile proceedings. In certification and extended jurisdiction juvenile cases where a child is detained in secure custody, the court shall give credit for time served when it executes an adult sentence.

21.04 Appeal by Prosecuting Attorney

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

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

(2) denial of a motion for certification or denial of a determination of extended jurisdiction juvenile, and

(3) pretrial orders, including suppression orders.

Orders dismissing a petition for lack of probable cause or dismissing a complaint pursuant to Minnesota Statutes, section 631.21, are not appealable.

Appeals from disposition or sentence shall only include matters which arose after adjudication or conviction. In addition to all powers of review presently existing, the court may review the sentence or disposition to determine whether it is consistent with the standards set forth in Minnesota Rules of Juvenile Procedure 15.05, subds. 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 which is responsible for prosecution of the case.

Subd 3 Procedure for Appeals Prosecutorial appeals from final orders shall be governed by Minnesota Rules of Juvenile Procedure 21.03, subd. 2. All other prosecutorial appeals shall proceed as follows:

(A) *Time for Appeal* The prosecuting attorney may not appeal until all issues raised during the certification hearing or the evidentiary hearing and pretrial conference have been determined by the trial court. The appeal shall be taken within five (5) days after notice of entry of the order appealed from 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.

(B) *Notice of Appeal and Filing* Minnesota Rules of Juvenile Procedure 21.03, subd. 2(B) shall govern notice of appeal and filing of an appeal by the prosecuting attorney, except

that the prosecuting attorney must file a statement of the case as provided for by Minnesota Rules of Civil Appellate Procedure 133.03. In addition, 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.

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

(1) 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.

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

(3) 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 five (5) 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 Minnesota Rules of Juvenile Procedure 5 or Minnesota Rules of Criminal Procedure 6.02, subs 1, 2, for children certified to adult court. The 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.

21.05 Appeal by Parent(s), Legal Guardian or Legal Custodian of the Child

If the parent(s), legal guardian or legal custodian participated separately pursuant to Minnesota Rules of Juvenile Procedure 2.04, subd. 3, they may appeal from a disposition sentence or order for certification by the juvenile court.

Parents who are indigent may make application to the office of the state public defender.

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 the parent(s), legal guardian or legal custodian shall be governed by Minnesota Rules of Juvenile Procedure 21.03, subd. 2.

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.

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 P 21 03 subd 1(A) (7) and (10) includes the right to appeal a stayed sentence and the execution of a stayed sentence See Minn R Crim P 27 04 subd 3(5) and 28 05 subd 2 An order continuing the matter without adjudication and imposing a disposition pursuant to Minnesota Statutes section 260 185 subd 1(a) or (b) (1994) is an appealable final order as is a subsequent order adjudicating the child and imposing a disposition pursuant to Minnesota Statutes section 260 185 subd 1 (1994)

A child's representation by the public defender is governed by Minn Stat Ch 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 P 3 06 subd 2 See also Minnesota Statutes section 260 251 subd 4 (1994)

Minn R Juv 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

In the new legislation providing representation for juveniles on appeal and expedited appeals funding for this mandate was not provided Until further resources are available it is recommended that the court of appeals be lenient in granting extensions for turning of briefs if requested When added staff can be hired the rules should be modified to shorten time frames to allow for more expedited appeals of juvenile cases

Whether or not the order for certification should be stayed is discretionary with the court Certification orders are governed by Minn R Juv P 18 06 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

Rule 22 Substitution of Judge

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

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

22 03 Notice to Remove

Subdivision 1 Service and Filing The child 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 party 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 earlier than seven (7) days after the initial hearing and assignment of counsel for the child and 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.

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 13. The rule permits the child 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 factfinder 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 I 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 J P L., 359 N W 2d 622 (Minn Ct App 1984).

Rule 23 Referee

23 01 Authorization to Hear Cases

A referee may hear matters as authorized by statute.

23 02 Objection to Assignment of Referee

The child 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 m-

formed 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.

23 03 Notice to Remove a Particular Referee

The child 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 Minnesota Rules of Juvenile Procedure 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.

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.

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 Minnesota Rules of Juvenile Procedure 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 except those dismissing a petition for lack of probable cause. The prosecuting attorney is not entitled to a review 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 recommendations 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.

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 Minnesota Rules of Juvenile Procedure 23 05.

Rule 24 Guardian Ad Litem

24 01 Appointment

(A) The court shall appoint a guardian ad litem, except as provided in Minnesota Rules of Juvenile Procedure 24 01 (B), to act in place of a parent, legal guardian or legal custodian to protect the best interest 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

A determination not to appoint a guardian ad litem must be based on a finding made on the record or in writing which states the reasons for the decision

(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 interest of the child

24 02 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

25 01 Summons, Notice in Lieu of Summons, Oral Notice on the Record, Service by Fax 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 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 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

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 FAX or Notice by Telephone Permitted

(A) Service By FAX

(1) Notice to Defense Counsel, Defense 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. 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 FAX if mailed notice would not be effective given the time remaining before the detention hearing

(2) Notice to Prosecuting Attorney If mailed notice in lieu of summons would not be effective given the time remaining before the detention hearing notice in lieu of summons may be provided by FAX

(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 have not gotten notice of the time and place of the detention hearing and effective service by mail or FAX 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

25 02 Content

Any summons or notice in lieu of summons shall include

(A) a copy of the petition citation tab charge 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

25 03 Procedure for Notification

Subdivision 1 First Notice by Mail 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 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, 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 notice in lieu of summons shall be mailed at least five (5) days before the hearing. A summons shall be personally served at least five (5) 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, and
- (2) the person on whom the summons was served and
- (3) the date, time, and place of service

(B) *Service by Mail* On or before the date set for appearance the person who served notice in lieu of summons by mail shall file a written statement with the court showing

- (1) the name of the person to whom the summons or notice was mailed
- (2) the date the summons or notice was mailed
- (3) whether the summons or notice was sent by certified mail

(C) *Notice of Detention Hearing Service by FAX* The person providing notice of a detention hearing by FAX shall file a written statement with the court showing

- (1) the name, address and FAX number of the person to whom the notice was faxed,
- (2) the time and date the FAX was sent or the efforts to do so,
- (3) the reason why notice was not sent by First Class Mail

(D) *Notice of Detention Hearing Telephone Call* The person providing notice of a detention hearing by telephone call shall file a written statement with the court showing

- (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 and, in the case of the child’s attorney or the prosecuting attorney, why the notice in lieu of summons was not faxed

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 2 (1994) notices of juvenile court proceedings were to be made by personal service or if made pursuant to Minn R Civ P 4 02 by mail with an acknowledgement returned to the court That was not the practice throughout the state This rule is written to reflect the common practice of simply mailing the notice (called a notice in lieu of summons) and petition 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 acknowledgment or by personal service The legislature has since amended Minnesota Statutes section 260 141 subd 2 to comport with this rule 1996 Minn Laws Ch 408 Art 6 Secs 3 and 12

This rule allows for notice of a detention hearing to be provided by FAX or telephone call when given the time remaining before the detention hearing mailed notice in lieu of summons would not be effective Notice by FAX or telephone is not permitted for any other type of hearing

This rule is not meant to prohibit informal service methods for service of the prosecuting attorney and the public defender by each other and by the court which have been historically efficient and cost-effective An example of this would be where the court administrator serves notice in lieu of summons on the prosecuting attorney by walking upstairs to the County Attorney s Office and placing the notice in lieu of summons in a pre-designated in-box

In the appendix of these rules are samples of a notice in lieu of summons and a summons

Rule 26 Subpoenas

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

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

Rule 27 Motions

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

27 02 Service of Motions

Subdivision 1 When Required Every written motion along with any supporting affidavits 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 or by mail. Service by mail shall be complete upon mailing to the last known address of the person to be served.

Subd 3 Time Any motion required by this rule to be served, along with any supporting affidavits, 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.

Rule 28 Copies of Orders

Court orders shall be stated on the record at the hearing or a copy of the written order shall be mailed to the child, the child's counsel, prosecuting attorney, the parent(s), the legal guardian or legal custodian of the child and their counsel. Copies of court orders shall be sent by the court to those listed above who request such a copy in writing or on the record and to such other persons as the court may direct.

Rule 29 Recording

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 required transcripts shall be prepared by personnel assigned by the court.

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 Minnesota Rules of Juvenile Procedure 2.03, subd. 3. Applications for transcripts shall be made to the court in writing or on the record.

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.

Rule 30 Records

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

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

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) 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 htem,
- (2) counsel for the child's parent(s) legal guardian or legal custodian

(C) *Prosecuting Attorney* Juvenile court records shall be available for inspection copying or release to the prosecuting attorney However if the matter has not had court action taken on it for over one (1) year, the court may require an ex-parte showing by the prosecuting attorney that inspection or copying of the court records is necessary and in the best interest of the child public safety or the functioning of the juvenile court system

(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 state or private agency providing supervision or having custody of the child under order of the court or
- (2) any individual for whom such record is needed to assist or to supervise the child in fulfilling a court order, or
- (3) any other person having a legitimate interest in the child or in the operation of the court

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

- (1) in the best interests of the child or
- (2) in the interests of public safety, or
- (3) necessary for the functioning of the juvenile court system

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

Comment—Rule 30

Legal records as defined in Minnesota Statutes section 260 161 subd 1 (1994) 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 260 161 subd 2 (1994) provides exceptions to public access of legal records arising under Minnesota Statutes section 260 155 subd 1 (1994) 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 (Supp 1995) 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 (1994) 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 (1994) 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

Pursuant to Minnesota Statutes section 260 161 subd 1a (1994) the juvenile court shall forward data for juvenile delinquents adjudicated delinquent for felony level criminal sexual conduct The court shall also forward data to the BCA on persons convicted as extended jurisdiction juveniles

If a juvenile is enrolled in school the 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 260 161 subd 1b (1994) When a disposition order is transmitted to a school the parent legal guardian or legal custodian shall be notified that this information has been sent to the juvenile's school

Rule 31 Timing

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, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday a Sunday or legal holiday 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 Birthday (President's Day), Memorial Day Independence Day Labor Day, Columbus Day Veteran's 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

31 02 Additional Time After Service by Mail

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

JUVENILE PROTECTION RULES JULY 20, 1982

Rule 37 Scope, Application, General Purpose and Construction

37 01 Scope and Application

Rules 37 through 65 govern the procedure for juvenile protection matters in the juvenile courts in the State of Minnesota Juvenile protection matters include all children in need of protection or services (including truants and runaways) as defined by Minnesota Statutes, section 260 015 subd 2a (1994), neglect neglected and in foster care termination of parental rights review of foster care domestic child abuse and reviews of out of home placement and permanent placement determination matters

(Amended effective August 1, 1996)

37 02 Purpose and Construction

These rules establish uniform practice and procedure for the juvenile courts of the State of Minnesota

37 03 Indian Child Welfare Act Applicability

Juvenile protection matters concerning an Indian child shall where applicable be governed by the Indian Child Welfare Act 25 USCA Chapter 21 sections 1901–1963 and by these rules when they are not inconsistent with the Indian Child Welfare Act

Rule 38 Referee

38 01 Authorization to Hear Cases

A referee may hear, as authorized by statute, any matter under the jurisdiction of the court in the manner provided for the hearing of matters by the court

38 02 Objection to Assignment of Referee

The county attorney and counsel for those persons who have the right to participate may object to a referee presiding at a 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 shall preside at any hearing.

38 03 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 persons present at the hearing who have the right to participate, their counsel and guardian ad litem, the county attorney and to any person that the court may direct.

38 04 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, pursuant to Rule 45.

Subd 3 Right of Review Upon Filing of Timely Motion Persons who have the right to participate and the county attorney are entitled to a review by a judge in any matter upon which a referee has made findings or recommendations.

Subd 4 Discretionary Review The judge may grant a review at any time before confirming the findings and recommendations of the referee.

Subd 5 Procedure A review by a judge may be on the verbatim recording made pursuant to Rule 46 or may be de novo in whole or in part.

38 05 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 38 04.

Rule 39 Right to Participate

39 01 Right of Child

Subdivision 1 Under Twelve (12) Years of Age A child who is subject of a petition who has not reached the age of twelve (12) years has the right to participate through the child's guardian ad litem and may personally participate upon order of the court.

Subd 2 Twelve (12) Years of Age and Older A child who is twelve (12) years of age or older who is the subject of a petition has the right to participate in all hearings unless excluded from the hearing pursuant to Rule 42 03. When the child is excluded from the hearing, the child may participate through the child's counsel and guardian ad litem.

39 02 Right of Parent(s) and Guardian

The parent(s) and guardian of a child who is the subject of a petition have the right to participate in all hearings on a petition unless excluded from the hearing pursuant to Rule 42 03. When excluded from the hearing, the excluded person has the right to participate through their counsel.

39 03 County Welfare Board and County Attorney

The county welfare board has the right to participate in the hearings through the county attorney.

The county attorney also may participate in a matter in which counsel, other than the county attorney has drafted and filed a petition pursuant to Rule 53 01 Subd 1 and the county welfare board does not participate. The county attorney must inform the court of the county attorney's intent to participate in writing or on the record at or before a first appearance on the petition. In such matter when the county attorney has not so informed the court of the intent to participate at or before a first appearance on the petition the county attorney may only participate when requested by the court upon the court's own motion or upon motion of the county attorney with good cause shown.

39 04 Guardian Ad Litem

The guardian ad litem of a child or of the parent of a child who is the subject of a petition has the right to participate as such guardian in all hearings.

39 05 Petitioner

When a petition has been drafted and filed by counsel other than the county attorney pursuant to Rule 53 01, the court may permit the petitioner to participate in all hearings unless excluded pursuant to Rule 42 03. When excluded from the hearing the excluded person has the right to participate through their counsel.

39 06 Procedure

Persons represented by counsel shall participate in hearings through their counsel. Persons not represented by counsel may participate in their own behalf.

Rule 40 Right to Counsel

40 01 Right of Child and Parent(s) to Separate Counsel

Subdivision 1 Generally The child has the right to be represented by an attorney who shall act as the child's counsel and who shall not be counsel for the parent(s) or guardian.

The parent(s) and guardian of the child have the right to be represented by an attorney who shall act as their counsel.

Subd 2 Advisory of Right to Counsel Any child, parent or guardian who is not represented by counsel if present in court shall be advised of the right to court appointed counsel by the court on the record or in writing at or before any hearing.

Subd 3 Appointment of Counsel

(A) *Child* When the child cannot afford to retain counsel, the child is entitled to representation by counsel appointed by the court at public expense. However, the court may order, after giving the parent(s) a reasonable opportunity to be heard that service of counsel shall be at the parent(s) expense in whole or in part depending on their ability to pay.

(B) *Parent(s) and Guardian* When the parent(s) or guardian cannot afford to retain counsel the parent(s) and guardian are entitled to representation by counsel appointed by the court at public expense. However, the court may order, after giving the parent(s) a reasonable opportunity to be heard that service of the parent(s)' counsel shall be at the parent(s) expense in whole or in part depending on their ability to pay.

40 02 Right of Guardian Ad Litem to Counsel

The guardian ad litem for the child shall be represented by the child's counsel.

However, in the event of a conflict between the child and the guardian ad litem, considered in the context of the matter counsel for the child shall continue to represent the child. The court may appoint separate counsel to represent the guardian ad litem.

Rule 41 Guardian Ad Litem

41 01 Appointment of Guardian Ad Litem

The court shall appoint a guardian ad litem except as provided by Rule 41 02 to protect the interest of the child when it appears, at any stage of the proceedings that the child is with-

out parent or guardian or that considered in the context of the matter, the parent or guardian is unavailable incompetent indifferent to hostile to or has interests in conflict with the child's interests

41 02 Determination Not to Appoint Guardian Ad Litem

The court may determine not to appoint a guardian ad litem when

- (a) counsel has been appointed or is otherwise retained for the child and
- (b) the court finds that the interests of the child are otherwise protected

41 03 Standards

In determining whether or not to appoint a guardian ad litem pursuant to Rule 41 02 the court should examine the totality of the circumstances These circumstances include but are not limited to the presence and competence of the child's parent(s) or guardian considered in the context of the matter the parent or guardian's hostility to indifference to or interests in conflict with the interests of the child, the child's age, maturity intelligence education experience and ability to comprehend

41 04 Findings

A determination of the court not to appoint a guardian ad litem when required by Rule 41 01 must be based on a finding on the record or in writing which states the facts on which the decision was made

41 05 Discretionary Appointment of Guardian Ad Litem

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

41 06 Guardian Ad Litem Not Counsel for Child

When the court appoints a guardian ad litem the guardian ad litem shall not be the child's counsel

41 07 Guardian for More Than One Child

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

41 08 Guardian Ad Litem for Parent

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

- (a) the parent is incompetent so as to be unable to assist counsel in the matter or understand the nature of the proceedings or
- (b) it appears at any stage of the proceedings that the child's parent is under eighteen (18) years of age and is without a parent or guardian, or that considered in the context of the matter, the parent or guardian is unavailable incompetent indifferent to hostile to or has interests in conflict with the interests of the minor parent

Rule 42 Presence at Proceedings

42 01 Right to Attend Hearing

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

42 02 Absence Does Not Bar Hearing

The absence from a hearing of a person who has the right to attend shall not prevent the hearing from proceeding provided appropriate notice has been served

42 03 Exclusion of Persons Who Have Right to Attend Hearings

In any hearing the court may temporarily exclude the presence of any person other than counsel or guardian ad litem when it is in the best interest of the child to do so. If a person other than counsel or guardian ad litem after warning engages in conduct which disrupts the court, the person may be excluded from the courtroom. The exclusion of the person shall not prevent the court from proceeding with the hearing.

42 04 Record of Exclusion and Right to Continued Participation

Any exclusion of a person who has the right to attend a hearing shall be noted on the record and the reasons for the exclusion given. The counsel and guardian ad litem of the excluded person have the right to remain and participate in the hearing.

Rule 43 Privacy

43 01 Attendance at Hearings

Only the following may attend hearings:

- (a) the child, guardian ad litem and counsel for the child, and
- (b) the parent(s), and guardian of the child and their counsel, guardian ad litem and legal custodian of the child, and
- (c) the spouse of the child, and
- (d) the county welfare board and county attorney, and
- (e) the petitioner and petitioner's counsel when the petitioner has the right to participate pursuant to Rule 39 05, and
- (f) persons requested by a person with the right to participate or by the county attorney who are approved by the court, and
- (g) persons authorized by the court under such conditions as the court may approve, and
- (h) persons authorized by statute under such conditions as the court may approve.

Rule 44 Notice

44 01 Notice, Summons, Court Orders

Subdivision 1 Notice A notice is a document issued by the court which provides the information required by Rule 44 03.

Subd 2 Summons A summons is a document issued by the court which provides the information required by Rule 44 03 and orders the presence in court at a stated time and place of either:

- (a) the person to whom it is directed, or
- (b) the person to whom it is directed and others as set forth in the summons.

Subd 3 Court Orders An oral order on the record directed to person(s) in court which order either orally or with written supplementation contains the information required by Rule 44 03 may provide notice and compel the presence of the person(s) at a stated time and place.

44 02 Procedure

Subdivision 1 Generally Summons or notice may be served by mail or by personal service.

Subd 2 Discretionary Service At any time the court may require the service of summons or notice to be by personal service.

At any hearing the court may provide notice to those present of a future hearing by a court order pursuant to Rule 44 02 Subd 3.

Except for a child who has reached twelve (12) years of age, a person properly served under these rules who does not attend the hearing for which notice was given or who was not

served pursuant to Rule 44.02, Subd. 3 need not be served notice of future hearings in the matter unless that person requests notice in writing or on the record. However, that person may be served at the court's discretion.

Subd. 3 Minimum Required Initial Service

(A) *Child and Person(s) with Custody or Control* The court shall issue and cause a summons to be served by personal service to the person(s) with custody or control of the child and to the child who has reached twelve (12) years of age.

(B) *Child's Counsel, County Attorney, Parent(s), Guardian, Custodian, and Spouse and Their Counsel* The court, unless it finds that notice would be ineffectual and it would be in the interest of the child to proceed without notice, shall issue and cause notice to be served to the persons with the right to participate, their counsel and guardian ad litem, and the child's custodian not served pursuant to Rule 44.02, Subd. 3(A), the child's spouse and the county attorney.

Subd. 4 Execution of Personal Service The summons or notice by personal service shall be served by any person authorized to serve process pursuant to Minn. Stat. 260.141, Subd. 2 and Rule 4.02 of the Minnesota Rules of Civil Procedure.

Subd. 5 Place of Service The summons or notice may be served at any place within the state except where prohibited by law. If personal service cannot be made within the state, a copy of the summons or notice may be personally served on a person to whom it is directed outside the state.

Subd. 6 Manner of Service

(A) *Personal Service* The summons or notice shall be served on the person to whom it is directed by delivering a copy to that person personally or by leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion residing therein.

(B) *Service by Mail* Initial service by mail to satisfy Rule 44.02, Subd. 3(B) shall be by certified mail to the last known address. All other service by mail shall be by ordinary mail to the last known address unless certified mail to the last known address is ordered by the court.

Subd. 7 Timing

(A) *Juvenile Protection Matters Except Termination of Parental Rights Matters* Summons or notice by personal service and summons or notice by mail shall be served on the person to whom it is directed sufficiently in advance of the hearing to which it relates to afford the person a reasonable opportunity to prepare for the hearing. At the request of counsel, the hearing shall not be held at the scheduled time if the summons or notice has been served less than three (3) days before the hearing.

If personal service is made outside the state, it shall be made at least five (5) days before the date fixed for the hearing to which the summons or notice relates.

If service is made by mail, a copy of the summons or notice shall be sent at least five (5) days before the time of the hearing or fifteen (15) days before the hearing if mailed to addresses outside the state.

(B) *Termination of Parental Rights Matters* Summons or notice by personal service or mail shall be made at least ten (10) days before the day of the hearing.

In addition to the requirements of statute and these rules, initial service by certified mail for a hearing for termination of parental rights shall also require publication as provided by Minnesota Statutes, section 645.11 for three (3) weeks before the hearing with the last publication being at least ten (10) days before the day of the hearing.

Subd. 8 Proof of Service

(A) *Personal Service* On or before the date set for appearance, the person who served a summons or notice by personal service shall file a written statement with the court showing

- (i) that the summons or notice was served, and
- (ii) the person on whom the summons or notice was served, and
- (iii) the date and place of service.

(B) *Service by Mail* On or before the date set for appearance, the person who served a summons or notice by mail shall file a written statement with the court showing

- (i) the name of the person to whom the summons or notice was mailed, and
- (ii) the date the summons or notice was mailed, and
- (iii) whether the summons or notice was sent by certified mail

44 03 Content of Summons or Notice

Any summons or notice shall contain or have attached

(a) a copy of the petition, court order, motion, affidavit or other legal documents, not previously provided, necessary to provide notice pursuant to Rule 44 02 and

(b) a statement of the time and place of the hearing, and

(c) a statement describing the purpose of the hearing and the possible consequence of the hearing that custody of the child may be removed from the parent(s) or legal custodian and placed with another, and

(d) a statement explaining the right to counsel and

(e) a statement that

(i) even with failure to appear in response to the notice or summons the hearing may still be conducted and appropriate relief granted on the petition and

(ii) further information concerning the date and place of subsequent hearings, if any, may be obtained from the court by a request in writing and

(f) such other matters as the court may direct

44 04 Waiver

Service is waived by voluntary appearance in court or by a written waiver of service filed with the court

However, a waiver of notice in a termination of parental rights matter pursuant to Minnesota Statutes section 260 231 subd 3 by a parent requires written concurrence by the parent's guardian ad litem if the parent is a minor or incompetent

Rule 45 Copies of Orders

Court orders shall be stated on the record at the hearing or a copy of the written order shall be mailed to persons who have the right to participate their counsel, their guardian ad litem and the county attorney who are present at the hearing to which the order relates

Copies of court orders shall be sent by the court to the persons who have the right to participate, their counsel and guardian ad litem and the county attorney who request such a copy in writing or on the record and to such other persons as the court may direct

Rule 46 Recording

46 01 Procedure

A verbatim recording of all hearings shall be made by a stenographic reporter or by an electronic sound recording device If the recording is made by an electronic sound recording device, qualified personnel to operate the device shall be assigned by the court Any required transcripts shall be prepared by personnel assigned by the court

46 02 Availability of Transcripts

Transcripts of hearings for further use in the hearing or subsequent hearings appeal habeas corpus action or for other use as the court shall deem proper shall be made available to counsel for all persons who have the right to participate and the county attorney on application to the court Applications for transcripts shall be made to the court in writing or on the record

46 03 Expense

If counsel for any person with the right to participate applies to the court for a transcript of all or part of a hearing for an authorized use, pursuant to Rule 46 02 and that person is

unable to pay the preparation cost of the transcript, the court shall direct the preparation and delivery of the transcript to that person's counsel at public expense in whole or in part, depending on the ability of the person to pay

Rule 47 Continuances and Advancements

47 01 By Court Order

Either on its own motion or by motion of counsel for a person who has the right to participate or the county attorney the court may continue or advance a hearing for a reasonable time for good cause shown taking into consideration whether or not the child is placed outside the child's home by court order

47 02 Existing Orders

The court may order that existing orders remain in effect during a continuance

Rule 48 Subpoenas

48 01 Motion for Subpoenas

On the court's own motion or at the request of counsel for a person who has the right to participate or the county attorney, the court administrator shall issue subpoenas requiring the attendance and testimony of witnesses and the production of records, documents or other tangible objects at any hearing

(Amended effective March 1, 1990)

48 02 Expense

The fees and mileage of witnesses shall be paid by public funds if the subpoena is issued by the court on its own motion or at the request of the county attorney

If a subpoena is issued at the request of counsel for a person who has the right to participate, and that person is unable to pay the fees and mileage of witnesses these costs shall be paid at public expense upon order of the court, in whole or in part, depending on the ability of that person to pay

All other fees shall be paid by the requesting person unless otherwise ordered by the court

Rule 49 Motions

49 01 Motions to be Signed

Every motion shall be in writing state with particularity the grounds therefor be signed by the person making the motion and filed with the court unless it is made in court and on the record

49 02 Service of Motions

Subdivision 1 When Required

(A) *Prior to First Appearance* Every written motion along with any supporting affidavits served prior to the first appearance shall be served on

- (i) the guardian ad litem for the child, and
- (ii) the child who has reached twelve (12) years of age, and
- (iii) persons who have the right to participate who are entitled to receive initial service of a petition pursuant to Rule 44 their counsel and guardian ad litem, and
- (iv) the county attorney

(B) *After First Appearance* Every motion along with any supporting affidavits served at or after the first appearance shall be served on

- (i) the guardian ad litem for the child, and

- (ii) the child who has reached twelve (12) years of age and
- (iii) persons who are exercising their right to participate, their counsel and guardian ad litem and
- (iv) the county attorney who is exercising the right to participate and
- (v) such other persons as the courts may order

Subd 2 How Made When service is required to be made upon a person represented by counsel service shall be made upon counsel

Service upon counsel is sufficient service upon the person counsel represents unless the court also orders service upon the person

Service of motions may be made by personal service or by mail Service by mail shall be complete three (3) days after mailing to the last known address of the person to be served

Subd 3 Time Any written motion along with any supporting affidavits shall be served at least five (5) days before it is to be heard unless the court for good cause shown permits a motion to be made and served less than five (5) days before it is to be heard

49 03 Ex Parte Motion

A motion may be made ex parte when permitted by statute or rule

Rule 50 Waiver of Counsel and Other Rights

50 01 Waiver of Right to Counsel and Other Rights

Subdivision 1 Standards A person entitled to counsel pursuant to Rule 40 and to any other right pursuant to these rules may waive the right to counsel and any other right only if the waiver is voluntarily and intelligently made If the child is not present or if the court determines in writing or on the record based on the totality of the circumstances that the child is incapable of understanding the proceedings or participating in the child s own behalf, the guardian ad htem may waive the right to counsel and any other right

Subd 2 Recording A waiver of counsel or any other right shall be on the record

Subd 3 Renewal After a person waives the right to counsel that person shall be advised of the right to counsel pursuant to Rule 40 at each subsequent hearing at which that person is present and is not represented by counsel

Rule 51 Immediate Custody

51 01 Order for Immediate Custody

Subdivision 1 Order Upon Probable Cause An order for immediate custody of a child may issue if a court finds from the facts set forth separately in writing in or with the petition filed with the court and any supporting affidavits or sworn testimony that there is probable cause to believe that a juvenile protection matter exists and that the child is the subject of that matter and that there is probable cause to believe that

(a) the child failed to appear after having been personally served with a summons or subpoena or

(b) reasonable efforts to personally serve the child have failed, or

(c) there is a substantial likelihood that the child will fail to respond to a summons

or

(d) the welfare of the child requires that the child be brought into the custody of the court

Subd 2 Order Without Probable Cause Petition An order for immediate custody of a child without a finding of probable cause by the court may issue if the child has appeared in court in regard to a petition and

(a) the child has left the custody of the court ordered placement without permission of the court, or

(b) the child has violated a court order

51 02 Contents of Order for Immediate Custody

An order 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 placement facility designated by the court to be placed pursuant to Minnesota Statutes section 260 173 pending a hearing pursuant to Rule 52 and

(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 and

(c) state the age and sex of the child, 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, and

(d) state the reasons why the child is being taken into custody as set forth in Rule 51 01 and

(e) where applicable state the reasons for a limitation on the time or location of the execution of the order and

(f) state the date when issued and the county and court where issued

51 03 Execution of Order for Immediate Custody

Subdivision 1 Who May Execute The order for immediate custody may only be executed by a peace officer authorized by law to execute a warrant

Subd 2 How Executed The order for immediate custody shall be executed by taking the child into custody

Subd 3 Where Executed The order for immediate custody may be executed at any place in the state except where prohibited by law unless the judge who issues the order limits the location where the order may be executed

Subd 4 When Executed An order may be executed at any time unless the judge who issues the order limits the time during which the order may be executed

Subd 5 Possession of Order An order for immediate custody need not be in the peace officer's possession at the time the child is taken into custody

Subd 6 Advisory When an order is executed the child if capable of understanding and the child's parent(s) guardian and custodian if present shall immediately be informed of the existence of the order for immediate custody and as soon as possible of the reasons why the child is being taken into custody

Rule 52 Prehearing Placement (Detention)

52 01 Generally

A child is placed (detained) when

(a) taken into custody pursuant to Minnesota Statutes section 260 135 260 145 or 260 165,

(b) the court orders placement of the child pursuant to Minnesota Statutes section 260 172 or 260 185 before a disposition pursuant to Rule 62 and

(c) the court orders conditions of release pursuant to Rule 52 02 Subd 3 before a disposition pursuant to Rule 62

52 02 Release or Continued Placement

Subdivision 1 Child Taken Into Custody With Court Order

(A) *Release Prohibited* A child taken into custody with a court order may not be released within seventy-two (72) hours without a court order

(B) *Mandatory Release* A child shall not be held in placement for more than seventy-two (72) hours unless a hearing has commenced and the court has ordered continued placement

Subd 2 Child Taken Into Custody Without Court Order – Mandatory Release The child shall be released if a hearing pursuant to Rule 52 04 has not commenced within the time required by statute, and the court has not ordered continued placement

Subd 3 Discretionary Release by the Court The court at any time before an initial hearing may release a child in placement pursuant to Minnesota Statutes, section 260 165 and may impose one or more of the following conditions

(a) place restrictions on the child's travel, associations or place of abode during the period of the child's release, and

(b) any other conditions deemed reasonably necessary and consistent with criteria for protecting the child.

Any conditions of release terminate after seventy-two (72) hours unless a hearing has commenced and the court has ordered continued placement and continuation of the condition(s).

Subd 4 Discretionary Release by Officer or County Attorney Except when release is prohibited pursuant to court order or Rule 52.02 Subd. 1(A), the detaining officer, the detaining officer's supervisor, or the county attorney may release a child anytime prior to a placement hearing.

The detaining officer, the detaining officer's supervisor, or the county attorney who releases the child may not place any conditions of release on the child.

Subd 5 Release to Custody of Parent A child released from placement shall be released to the custody of the child's parent(s), guardian, custodian, or other suitable person.

52.03 Reports

Subdivision 1 Report by Detaining Officer Any report required by Minnesota Statutes, section 260.171 subd. 5 shall be filed with the court on or before the court day following placement of the child and the report shall include at least:

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

(b) the time the child was delivered for transportation to the placement facility, and

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

(d) the reasons why the child has been placed, and

(e) a statement that the child and the child's parent(s) and guardian have received the advisory required by Minnesota Statutes, section 260.171, subd. 4, or the reasons why the advisory has not been made, and

(f) if disclosure of the location of the placement has not been made because there is reason to believe that the child's health and welfare would be immediately endangered, reasons to support the nondisclosure.

Subd 2 Report by Supervisor of Placement Facility Any report required by Minnesota Statutes, section 260.171 subd. 6 shall be filed with the court on or before the court day following placement. The report shall include, at least, acknowledgement of receipt of the child and state the time the child arrived at the placement facility.

52.04 Placement Hearing (Detention Hearing)

Subdivision 1 Generally The court shall commence a placement hearing within seventy-two (72) hours when the child has been taken into custody and not released.

Subd 2 Continuance The court may continue the placement hearing for a period not to exceed eight (8) days when witnesses are to be called.

Subd 3 Information of Hearing to be Provided The court shall inform the child, child's counsel, child's guardian ad litem, county attorney, and the parent(s), guardian, custodian, and spouse of the child, and those persons required by Minnesota Statutes, section 124.2129, subd. 4, of the time and place of a placement hearing. Failure to inform the parent(s), guardian, custodian, or spouse of the child or their nonattendance at the hearing shall not prevent a hearing from being conducted, or invalidate the proceeding or an order of placement.

Subd 4 Advice of Rights At the beginning of the hearing the court shall advise all persons present of:

(a) the reasons why the child was taken into custody, and

(b) the statutory allegations set forth in the petition, and

(c) the purpose and scope of the hearing, and

(d) the right of the child and parents to be represented by counsel at the hearing and at every other hearing and, where applicable, of the right to court-appointed counsel.

Subd 5 Evidence The court may admit any evidence except privileged communications including reliable hearsay and opinion evidence that is relevant to the decision whether to continue the child in placement

Subd 6 Finding Necessary for Continued Placement A child may be detained after a placement hearing if

- (a) prior to or during the hearing the court finds that the petition
 - (i) alleges that the child has appeared in court in regard to a petition and the child has left the custody of the court-ordered placement without permission of the court or the child has violated a court order, or
 - (ii) contains probable cause that a juvenile protection matter exists and that the child is the subject of that matter and
- (b) at the hearing the court finds probable cause that
 - (i) the child or others would be endangered if the child is released, or
 - (ii) the child would not appear for a court hearing or would not respond to a summons or notice if the child is released or
 - (iii) the child would not remain in the care or control of the person to whose lawful custody the child is released or
 - (iv) release of the child would immediately endanger the child's health or welfare

52 05 Release of the Child

A child shall be released after a placement hearing if the court does not make the findings pursuant to Rule 52 03 Subd 6(a) and (b)

52 06 Placement Order

Subdivision 1 Alternatives If the court makes the findings pursuant to Rule 52 03 Subd 6(a) and (b) the court may

- (a) order the continued placement of the child or
- (b) release the child and impose conditions pursuant to Rule 52 02 Subd 3

Subd 2 Content The order for continued placement shall be in writing and shall include the findings of fact pursuant to Rule 52 04, Subd 6(a) and (b) which support continued placement or conditions of release

52 07 Placement Review

Subdivision 1 Informal Placement Review

- (A) *Timing* An informal placement review must be held every eight (8) days
- (B) *Change of Status*

(1) **Without Consent** The court by informal review may continue the child in placement without altered circumstances without the consent of the persons with the right to participate, their guardian ad litem(s) or the county attorney

(2) **With Consent** The court by informal review may continue placement with altered circumstances with the consent of the persons with the right to participate their guardian ad litem(s) and the county attorney

Subd 2 Formal Placement Review

(A) *On Motion of Court* The court may schedule a formal placement review hearing at any time

(B) *On Request of A Person with the Right to Participate or County Attorney Counsel* for a person with the right to participate or the county attorney may request a formal hearing to present new evidence concerning continued placement by filing a request with the court If the court finds a substantial basis for the request the court shall schedule a hearing and notify persons entitled to notice of the time and place of the hearing pursuant to Rule 44

(C) *Evidence* The court may admit any evidence except privileged communication, including reliable hearsay and opinion evidence that is relevant to the decision whether to continue the placement of the child

(D) Finding Necessary for Continued Placement At the conclusion of the formal review hearing the court may continue the child in placement if the court finds probable cause that

- (i) the child or others would be endangered if released or
- (ii) the child would not appear for a court hearing or not respond to a summons or notice if released, or
- (iii) the child would not remain in the care or control of the person to whose lawful custody the child is released, or
- (iv) release of the child would immediately endanger the child’s health or welfare

Rule 53 Petition

53 01 Procedure

Subdivision 1 Drafting and Filing All petitions shall be drafted and filed under the supervision of the county attorney unless Minnesota Statute or the court by rule or order permits counsel, other than the county attorney, to draft and file a petition with the court

Subd 2 Verification The petition shall be verified by a person having knowledge of the facts or may be verified on information and belief

53 02 Contents

Every petition filed with the court in a juvenile protection matter shall contain

- (a) a statement that the child is the subject of a juvenile protection matter and a simple concise and direct statement of facts in support of the petition, and
- (b) the name date of birth, residence and post office address of the child, and
- (c) the names, residences and post office addresses of the child s parent(s) when known, and
- (d) the name, residence and post office address of the child’s guardian if there is one, of the person havmg custody or control of the child or of the nearest known relative if no parent or guardian can be found and
- (e) the name, residence and post office address of the spouse of the child, and
- (f) a citation of the subdivision(s) of Minnesota Statutes section 260 015 257 071 or 260 221 on which the petition is based, together with a recitation of the relevant portion of the subdivision(s)

53 03 Petition with Probable Cause

Subdivision 1 When Required In addition to the content requirements of Rule 53 02 a petition with probable cause shall be filed with the court

- (a) before the court may issue an order pursuant to Rule 51 01 Subd 1 or
- (b) before a placement hearing is held for a child taken into custody without an order

Subd 2 In or With Petition The facts establishing probable cause to believe that a juvenile protection matter exists and that the child is the subject of that matter may be set forth in writing in or with the petition, or in supporting affidavits and may be supplemented by sworn testimony of witnesses taken before the court If such testimony is taken, a note so stating shall be made of this fact on the petition by the court The testimony shall be recorded by a reporter or recording instrument and shall be transcribed and filed

53 04 Amendment

A juvenile protection petition may be amended by order of the court at any time

Additional facts consistent with the allegations of the petition may be added to the petition at any time However, facts consistent with the allegations of the petition which occur after the filing of the petition need not be added to the petition in order to be proved at trial

Amendments shall be freely permitted in the interest of justice and the welfare of the child

A juvenile protection petition may not be amended to a petition alleging a nonjuvenile protection matter

If the court orders amendment of the petition it shall grant all persons who have the right to participate such additional time to prepare for further proceedings in the matter as may be required to ensure a full and fair hearing

53 05 Timing

If a child is taken into custody and is placed out of the child's home a petition must be filed prior to the time a placement hearing must be commenced pursuant to Minnesota Statutes, section 260 172

53 06 Determination to Proceed on Petition

Upon the filing of a petition the court shall promptly fix a time for a first appearance on the petition and issue notice of the hearing pursuant to Rule 44

Rule 54 First Appearance

54 01 Generally

First appearance is a hearing at which the child and the child's parent(s) and guardian shall be required to admit or deny the allegations of the petition

54 02 Timing

Subdivision 1 Child in Placement When the child is placed out of the child's home by court order a first appearance shall be within ten (10) days of the child being placed. A first appearance may be at a placement hearing held pursuant to Rule 52

Subd 2 Child Not in Placement When the child is not placed outside the child's home by court order a first appearance shall be within twenty (20) days after the child and the child's parent(s) and guardian have been served with the petition

Subd 3 Possession of Petition The child and the child's parent(s) and guardian, their counsel and guardian ad litem have the right to have a copy of the petition for three (3) days before a first appearance

54 03 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 the subject of the matter, and

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

(c) determine whether the child and the child's parent(s) and guardian are either represented by counsel or waive counsel and

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

(e) if the child or the child's parent(s) and guardian appear without counsel, explain the right to counsel and other basic rights, and

(f) if the child or the child's parent(s) and guardian appear without counsel, explain the purpose of the hearing and the possible transfer of custody of the child from the parent(s), guardian or custodian to another, when such transfer is permitted by law

Subd 2 Reading of Allegations of Petition Unless waived by the child and the child's parent(s) and guardian, the court shall read the allegations of the petition and determine that the child and the child's parent(s) and guardian understand the allegations of the petition, and if not, provide an explanation

Subd 3 Motions The court shall hear any motions, made pursuant to Rule 49, addressed to the sufficiency of the petition or jurisdiction of the court without requiring any person to admit or deny the allegations of the petition prior to making a finding on the motion

Rule 55 Admission or Denial

55 01 Generally

The child and the child's parent(s) and guardian may admit or deny the allegations of the petition or remain silent. If either the child or the child's parent(s) and guardian who are present at the hearing deny the allegations of the petition, remain silent or if the court refuses to accept an admission, the court shall enter a denial of the petition on the record.

55 02 Denial

Subdivision 1 Denial Without Appearance By rule of the court or by court order in a particular matter a written denial or a denial on the record of the allegations of a petition may be entered by counsel without the personal appearance of the person represented by counsel.

Subd 2 Further Proceedings After Denial When a denial is entered the court shall schedule further proceedings pursuant to Rule 58 or Rule 59.

55 03 Admission

Subdivision 1 Admission Without Appearance By rule of the court or by court order in a particular matter a written admission or an admission on the record of the allegations of the petition may be entered by counsel without personal appearance of the person represented by counsel.

Subd 2 Questioning of Person Admitting the Allegations of Petition Before accepting an admission on the record or by written documents the court shall on the record or by written document signed by the person admitting and counsel, if any, and filed with the court determine the following:

- (a) whether the person admitting acknowledges an understanding of
 - (i) the nature of the allegations of the petition, and
 - (ii) the right to a trial, and
 - (iii) the right to testify, and
 - (iv) the right to subpoena witnesses, and

(b) whether the person admitting acknowledges an understanding that the facts being admitted establish the allegations of the petition, and

(c) whether the person admitting acknowledges an understanding that a possible effect of a finding that the allegations are proved may be the transfer of legal custody of the child to another, when such transfer is permitted by law.

Subd 3 Factual Basis for Admission The court shall refuse to accept an admission unless there is a factual basis for the admission.

Subd 4 Withdrawal of Admission After filing a motion with the court:

(a) an admission may be withdrawn at any time upon a showing that withdrawal is necessary to correct a manifest injustice, or

(b) the court may allow a withdrawal of an admission before a finding on the petition for any fair and just reason.

Subd 5 Acceptance or Nonacceptance of Admission The court shall make a finding within fifteen (15) days of an admission:

(a) that the admission has been accepted and the allegations of the petition have been proved, or

(b) that the admission has not been accepted.

Subd 6 Future Proceedings If the court makes a finding that the admission is accepted and the allegations of the petition are proved the court shall schedule further proceedings pursuant to Rule 61.

If the court makes a finding that the admission has not been accepted the court shall schedule further proceedings pursuant to Rule 51 01 Rule 51 02 and Rule 58 or Rule 59

Rule 56 Settlement Discussions

56 01 Generally

For the purpose of achieving the objectives of the juvenile court settlement discussions may be utilized

56 02 Procedure

The court shall require disclosure of any settlement agreement in advance of an admission of the allegations of the petition When a person admits the allegations of a petition the court shall reject or accept the admission on the terms of the settlement agreement The court may postpone its acceptance or rejection until it has received a predisposition report If the court rejects the settlement agreement, it shall advise the person(s) entering into the settlement agreement of this decision on the record and shall call upon the person(s) admitting to either affirm or withdraw the admission

56 03 Settlement Agreement on Record

The settlement agreement shall be filed with the court or affirmed on the record

56 04 Settlement Agreement May Include Disposition Recommendation

Settlement agreements may include recommendations as to disposition

Rule 57 Discovery

57 01 Generally

For purposes of this rule

- (a) participants are persons with the right to participate, pursuant to Rule 39, and
- (b) the officer is the person designated by the court to take testimony, pursuant to Rule 57 09, Subd 3

57 02 Methods of Discovery

A participant may obtain discovery by depositions upon oral examination inspection of documents or other tangible things, physical and mental examinations and disclosure of information within the scope of this rule Unless the court orders otherwise, the frequency and sequence of discovery methods are not limited

The discovery procedures provided for by this rule do not exclude other lawful methods for obtaining evidence

57 03 Scope of Discovery

Subdivision 1 Generally A participant may obtain discovery regarding any matter, not privileged, which is relevant to the pending action including the existence, nature, custody, condition, and location of any documents, data, photographs or other tangible things and the identity and location of persons having knowledge of any discoverable matter It is not grounds for objection that the information sought will be inadmissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence

Subd 2 Written, Recorded or Transcribed Statements A participant may obtain a written, recorded or transcribed statement concerning the matter previously made by that participant or another

Subd 3 Witnesses

(A) *Generally* Counsel for a participant and the county attorney shall

- (i) provide to other counsel and the county attorney the names and addresses of persons intended to be called as witnesses at trial,

(ii) permit other counsel and the county attorney to inspect and copy any written or recorded statements of the persons intended to be called as witnesses at trial and which are within the possession or control of counsel or the county attorney and

(iii) permit other counsel and the county attorney to inspect and copy any written summaries within the knowledge of counsel or the county attorney or the substance of any oral statements made by such witnesses to counsel or the county attorney or obtained at the direction of counsel or the county attorney

(B) Experts

(1) Generally Counsel for any participant and the county attorney may obtain discovery of the identity of each person expected to be called as an expert witness at trial and the substance of the facts and opinions to which an expert witness is expected to testify and a summary of the grounds for each opinion

(2) Limitations Facts and opinions held by an expert not expected to be called as a witness at trial are discoverable only as otherwise provided in Rule 57 09

Subd 4 Trial Preparation Materials Subject to the provisions of this rule a party may obtain discovery of documents and tangible things otherwise discoverable under this rule and prepared in anticipation of trial by or for another participant or that person s representative only upon a showing that the participant seeking discovery has substantial need of the materials in preparation for trial and that person is unable without undue hardship to obtain the substantial equivalent of the materials by other means In ordering discovery of such materials when the required showing has been made the court shall protect against disclosure of the mental impressions conclusions opinions or legal theories of counsel concerning the matter

57 04 Stipulation Regarding Discovery Procedure

The participants may, by stipulation provide that discovery be made at any time or place upon any notice and in any manner, and modify the procedures provided by these rules for methods of discovery

57 05 Duty to Disclose

Subdivision 1 Supplementation of Response A participant is under a continuing duty to disclose and where applicable permit inspection of

(a) the existence of any designated documents data photographs or other tangible things within the scope of Rule 57, and

(b) the identity and location of persons having knowledge of discoverable matters and

(c) the identity of each person expected to be called as a witness at trial

Subd 2 Amendment A participant shall amend discovery previously provided upon receiving knowledge that information previously given was incomplete incorrect or if correct, no longer true and the circumstances are such that a failure to disclose additional information constitutes a knowing concealment

57 06 Protective Orders

Subdivision 1 Generally Upon motion and for good cause shown the court may make any order which justice requires to protect a participant from annoyance, embarrassment, oppression or undue burden or expense including one or more of the following

(a) that discovery not be had or that it may be had only on specific terms and conditions or

(b) that discovery may be had only by a method other than that selected by the participant seeking it, or

(c) that certain matters not be inquired into or that the scope of discovery be limited to certain matters or

(d) that discovery be conducted with no one present except persons designated by the court, or

(e) that a deposition after being sealed be opened only by order of the court or

(f) that the participants simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court

Subd 2 Demal If the motion for protective order is demed in whole or in part the court may on such terms and conditions as are just, order that any participant provide or permit discovery

57 07 Expenses

The costs of discovery shall be at the expense of the requesting participant. However when the participant is unable to afford the costs of discovery the costs shall be at public expense in whole or in part depending on the ability of the participant to pay

57 08 Physical and Mental Examinations

Subdivision 1 Generally If the physical or mental condition of a participant is in controversy the court may order the participant to submit to a mental or physical examination by a licensed professional. For purposes of this rule

(a) a mental examination shall include any testing or evaluation by a licensed psychologist or psychiatrist and

(b) a physical examination shall include any testing or evaluation by a licensed physician

The order may be only on motion for good cause shown and upon notice to the participant to be examined and to all other participants. The order shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made

Subd 2 Copy of Report of Examination The participant causing the examination to be made shall deliver to the participant examined a copy of a detailed written report of the examining professional setting his findings and conclusions, together with the like reports of all earlier examinations of the same condition. After such delivery the participant causing the examination to be made shall be entitled, upon request to receive from the participant examined a like report of any examination, previously or thereafter made of the same mental or physical condition. If the participant examined refuses to deliver such report, the court on motion and notice may make an order requiring delivery on such terms as are just. If an examining professional fails or refuses to make such a report the court may exclude his testimony at any hearing

By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the participant examined waives any privilege that person may have in the proceeding or any other involving the same controversy regarding the testimony of every other person who has examined or may thereafter examine the participant for the same mental or physical condition

Other participants may obtain copies of the report of an examination upon motion and a showing that the report would be of material aid to the requesting participant

Subd 3 Disclosure after Waiver of Privilege When medical privilege has been waived by a participant under this rule such participant within ten (10) days of a written request by another participant

(a) shall furnish to the requesting participant copies of all reports previously or thereafter made by any treating or examining professional and

(b) shall provide written authority signed by the participant of whom request is made to permit the inspection of all hospital, medical treatment center, psychological or psychiatric records, concerning the physical or mental condition of such participant

Depositions of treating or examining professional shall not be taken except upon order of the court for good cause shown upon motion and notice pursuant to Rule 44 and upon such terms as the court may provide

Disclosures under this rule shall include the conclusions of such treating or examining professional

57 09 Depositions

Subdivision 1 Generally Following the initial appearance any participant may take the testimony of any other person or participant by deposition upon oral examination when there is a reasonable probability that the testimony of a prospective witness will be used at a hearing, and

- (a) there is a reasonable probability that the witness will be unable to be present or to testify at the hearing because of the witness's existing physical or mental illness, infirmity or death or
- (b) the participant taking the deposition cannot procure the attendance of the witness at a hearing by a subpoena order of the court or other reasonable means or
- (c) there is a stipulation by counsel

The court may order that the testimony of a person may be taken by oral deposition upon motion pursuant to Rule 49 and a showing that the information sought cannot be obtained by other means

Attendance of witnesses at oral deposition may be compelled by subpoena as provided by Rule 48

Subd 2 Notice of Taking A participant desiring to take the deposition of a person upon oral examination shall give reasonable notice pursuant to Rule 44. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined if known and if the name is not known, a general description sufficient to identify the deponent. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice. The court may for good cause shown lengthen or shorten the time for taking the deposition

Subd 3 Before Whom Taken

(A) *Persons Authorized* Deposition shall be taken before an officer authorized to administer oaths by the laws of the United States, or before a person appointed by the court in which the matter is pending. A person so appointed has the power to administer oaths and take testimony

(B) *Disqualification for Interest* No deposition shall be taken before an officer who is a relative or employee of a participant or the participant's attorney

Subd 4 Recording A deposition shall be recorded by an electronic recording device, in which event the court shall designate the manner of recording, preserving and filing the deposition. The court may order additional procedures be followed to insure that the recorded testimony will be accurate and trustworthy, including but not limited to

- (a) equipment shall be of high quality and tested before being used,
- (b) the person who operates and monitors the equipment shall not otherwise participate in the interrogation process. This person should be someone independent of the participants and their counsel,
- (c) speakers shall identify themselves whenever necessary for clarity of the record,
- (d) the original tape recording should be labeled, placed in a sealed envelope, and delivered promptly to the court, and
- (e) any participant

- (i) may make a copy of the recorded deposition and

- (n) may make a written transcript of the deposition at that participant's expense. To be used in court the person copying or transcribing the recorded deposition shall certify that the copy or transcript is true and accurate. The participant producing the transcript shall give notice to all other participants pursuant to Rule 44 that a transcript had been made and shall make the transcript available for photocopying at the expense of any participant who requests a copy

A participant may nevertheless arrange to have a stenographic transcription made at that participant's expense

Subd 5 Procedure

(A) *Examination and Cross Examination of Witnesses* Examination and cross examination of witnesses may proceed as permitted at trial. The officer before whom the de-

position is taken shall put the witness on oath. The testimony shall be recorded by the officer or by a person at the officer's direction and in the officer's presence. Testimony shall be recorded pursuant to Rule 57.09, Subd. 4.

(B) Objections

(1) *Officer Recording Conduct Evidence or Other Oral* Objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of recording it or to the evidence presented, or to the conduct of any participant or any other objection to the proceeding shall be noted by the officer on the record. Evidence objected to shall be taken subject to the objection.

(2) *Accuracy of Transcript* Objections to the accuracy or trustworthiness of the recording, by electronic or stenographic means shall be in writing and filed with the court within ten (10) days of the filing of the recorded deposition.

(3) *Review by Court* The court shall rule on any objection by reviewing the original tape and transcript if any, of the deposition.

(C) Limitation or Termination At any time on motion of the child's counsel or the county 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 substantiality of the issues.

At any time during the taking of a deposition on motion of a participant or of the deponent and upon a showing that the examination is being conducted in bad faith or in such a manner as unreasonably to annoy, embarrass, or oppress the participant or deponent, the court may order the person conducting the examination to cease from taking the deposition or may limit the scope and manner of taking the deposition by ordering as follows:

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

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

Upon demand of a participant or the deponent, the taking of the deposition shall be suspended for the time necessary to move the court for the order. If the court orders termination the deposition shall resume only upon further order of the court.

(D) Examination and Alteration of Transcript When testimony is stenographically transcribed, the deposition shall be submitted to the deponent for examination and shall be read to or by the deponent unless such examination or reading are waived by the deponent or by the participants. Any changes in form or substance which the deponent desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the deponent for making those changes.

(E) Signature of Deponent The stenographically transcribed deposition shall be signed by the deponent after examination and alteration of the transcript or a waiver of either. Participants may forego signing by stipulation by waiver or if the deponent is ill, or cannot be found or refuses to sign. If the deposition is not signed by the deponent within fifteen (15) days of submitting it to the deponent the officer shall sign it and state on the record the fact of the waiver, illness, absence or refusal to sign by the deponent together with any reason given therefor. The deposition may then be used as though fully signed unless on a motion to suppress the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(F) Certification of Deposition and Exhibits The officer shall certify on the deposition that the deponent was duly sworn and that the deposition is a true record of the testimony given by the deponent. The officer shall then place the deposition in an envelope addressed with the title of the matter and marked "Deposition of (here insert the name of the deponent)" and shall promptly deliver or mail it to the court administrator.

Documents and things produced for inspection during the examination of the deponent shall upon request of a participant be marked for identification and annexed to and returned with the deposition and may be copied and inspected by any participant, except that

(i) the person producing the materials may substitute copies to be marked for identification if that person affords to all participants fair opportunity to verify the copies by comparison with the originals and

(ii) if the person producing the materials requests their return, the officer shall mark them, give each participant an opportunity to inspect and copy them and then return the materials to the person producing them and the materials may then be used in the same manner as if annexed to and returned with the deposition

Any participant may move for an order that the original be annexed to and returned with the deposition to the court pending final disposition of the case

(G) *Notice of Filing* The participant taking the deposition shall give prompt notice of its filing to all other parties

(H) *Copies* Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any participant or the deponent

(I) *Procedural Failure of Requesting Participant* If the participant giving the notice of the taking of a deposition fails to attend or proceed therewith or if that participant fails to serve a subpoena on the deponent and the deponent because of the failure does not attend and another participant attends in person or by counsel pursuant to the notice, the court may order the participant giving notice to pay such other participant the amount of the reasonable expenses incurred by that participant and the participant's counsel in so attending, including reasonable attorney's fees

(Amended effective March 1, 1990)

Subd 6 Use of Deposition

(A) *Unavailability of Witness* All or a part of a deposition so far as otherwise admissible under the Rules of Evidence may be used at any hearing against any participant who was present or represented at the taking of the deposition or had reasonable notice thereof, if it appears that

(a) the witness is unable to be present or to testify at the hearing because of the witness's existing physical or mental illness, infirmity, imprisonment or death, or

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

(c) the witness is at a greater distance than one hundred (100) miles from the place of the hearing or is out of state, or

(d) there is a stipulation by counsel or

(e) upon application and notice that such exceptional circumstances exist as to make it desirable in the interest of justice and with due regard to the importance of presenting the testimony of the witness orally in open court, to allow the deposition to be used

The court shall not allow the deposition to be used if it appears that the absence of the witness was procured by the party offering the deposition

(B) *Inconsistent Testimony* Any deposition may also be used by a participant for the purpose of contradicting or impeaching the testimony of the deponent as a witness. A deposition may not be used if it appears that the absence of the witness was procured by the person offering the deposition, unless part of the deposition has previously been offered

(C) *Substantive Evidence* A deposition may be used as substantive evidence so far as otherwise admissible under the rules of evidence if the witness refuses to testify despite an order of the court to do so

Subd 7 Objection at Hearing Subject to the provision of this rule, objections may be made at any hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of evidence if the witness were then present and testifying

Subd 8 Effect of Taking or Using Depositions A participant does not make a deponent that participant's witness for any purpose by taking that person's deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the participant introducing the deposition, but this shall not apply to the use by an adverse participant of a deposition under this rule. At any hearing a participant may rebut any relevant evidence contained in the deposition whether introduced by the offering participant or any other participants

Subd 9 Errors and Irregularities The effect of errors and irregularities in depositions shall be as follows

(a) all errors and irregularities in notice for taking the deposition are waived unless written objection is promptly served upon the participant giving notice,

(b) objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could have been discovered with reasonable diligence,

(c) errors and irregularities in the manner of taking the deposition, in the questions and answers, in the oath or affirmation, or in the conduct of the participants, and errors of any kind which might be obviated, removed or cured if promptly presented, are waived unless reasonable objection thereto is made at the taking of the deposition,

(d) objection to the competency of a witness or to the competency or relevancy of testimony are not waived by failure to make them before or during the taking of a deposition, unless the ground of the objection is one that might have been obviated or removed if presented at that time,

(e) errors and irregularities in the manner in which

(i) the testimony is transcribed and preserved, or

(ii) the deposition is prepared signed, certified, sealed endorsed, transmitted, or filed,

are dealt with by the officer taking the deposition, or are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been ascertained

57 10 Failure to Comply, Sanctions

Subdivision 1 Compelling Discovery A participant upon reasonable notice to other participants may apply for an order compelling discovery as follows

(A) *Procedure* An application for an order may be made to the court in which the action is pending, or on matters relating to a deponent's failure to answer questions propounded under Rule 57, to the court in the county where the deposition is being taken. An application for an order to a deponent who is not a participant shall be made to the court in the county where the deposition is being taken

(B) *Failure to Answer* If a deponent fails to answer a question propounded under Rule 57 or if a participant in response to a request for inspection or disclosure authorized by Rule 57 fails to respond or permit inspection or disclosure, the discovering participant may move for an order compelling inspection or disclosure. When taking a deposition upon oral examination the proponent of the question may complete or adjourn the examination before applying for an order. If the court denies the motion in whole or in part, the court may make such protective order as it would have been empowered to make on a motion pursuant to Rule 57

(C) *Evasive or Incomplete Answers* For purposes of this rule an evasive or incomplete answer is to be treated as a failure to answer

(D) *Expenses of Motion*

(1) *When Motion Granted* If the motion is granted the court shall, after opportunity for hearing, require the participant or deponent whose conduct necessitated the motion, the participant or counsel advising such conduct, or both to pay the moving participant reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that circumstances make an award of expenses unjust

(2) *When Motion Denied* If the motion is denied, the court shall, after opportunity for hearing, require the moving participant or counsel advising the motion, or both of them, to pay the participant or deponent who opposed the motion reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that circumstances make an award of expenses unjust

(3) Apportionment If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the participants and persons in a just manner

Subd 2 Failure to be Sworn or Answer If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the county in which the deposition is being taken, the failure may be considered a contempt of court

Subd 3 Failure to Appear or Respond If a participant fails

(a) to appear before the officer who is to take that designated person's deposition after being served with proper notice, or

(b) to serve a written response to a request for inspection or disclosure permitted under Rule 57 after proper service of the request

the court in which the action is pending on motion may make such orders in regard to the failure as are just, including orders within the scope of this rule

In lieu of any order or in addition thereto, the court shall require the participant failing to act, or that participant's counsel or both to pay reasonable expenses including attorney's fees caused by the failure unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust

The failure to act described herein may not be excused on the ground that the discovery sought is objectionable unless the participant failing to act has applied for a protective order as provided by Rule 57

Subd 4 Order If a participant fails to obey an order to provide or permit discovery including an order under these rules, the court in which the action is pending may make such orders in regard to the failure as are just including the following

(a) an order that the matters regarding which the order was made, or any other designated facts, shall be taken to be established for purposes of the proceeding, in accordance with the claim of the participant who obtained the order or

(b) an order refusing to allow the disobedient participant to support or oppose designated claims, or prohibiting the disobedient participant from introducing designated matters in evidence or

(c) an order striking the petition or parts thereof, or staying further proceedings until the order is obeyed or dismissing the proceeding or any part thereof or rendering a judgment by default against the disobedient participant or

(d) in lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination

In lieu of any of the foregoing orders or in addition thereto, the court shall require the participant failing to act or the participant's counsel, or both to pay the reasonable expenses including attorney's fees, caused by the failure unless the court finds that the failure was substantially justified or that other circumstances made an award of expenses unjust

The failure to act described herein may not be excused on the ground that the discovery sought is objectionable unless the participant failing to act has applied for a protective order as provided in Rule 57 06

Rule 58 Pretrial Conference

58 01 Timing

Upon motion of a person with the right to participate or the county attorney or upon the court's own motion, the court may order a pretrial conference pursuant to rules of court adopted by the court

Pretrial issues and motions shall be heard immediately prior to the trial whenever there has been no pretrial conference unless the court orders otherwise for good cause

Rule 59 Trials

59 01 Generally

A trial is a hearing held to determine if the allegations of the petition are proved

59 02 Timing

Subdivision 1 Commencement of Trial A trial shall commence

(a) for a child placed outside of child's home by court order, within ninety (90) days from the date of the denial of the allegations of the petition, or

(b) for a child not placed outside the child's home by court order, within one hundred twenty (120) days from the date of the denial of the allegations of the petition

Subd 2 Dismissal If the trial has not commenced within the time set forth above or a continuance has not been granted, the petition shall be dismissed unless good cause is shown why the matter has not been brought to trial within the required time

Subd 3 Effect of Mistrial, Order of 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 shall be commenced within sixty (60) days

59 03 Procedure

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 cause, and

(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, and

(d) if the child or the child's parent(s) and guardian appears without counsel, explain the right to counsel, and other basic rights, and

(e) if the child or the child's parent(s) and guardian appears without counsel, explain the purpose of the hearing and the possible transfer of custody of the child from parent(s), guardian or custodian to another

Subd 2 Conduct and Procedure

(A) *Trial Rights* The counsel for the persons with the right to participate and the county attorney shall have the right to

(i) present evidence and

(ii) present witnesses, and

(iii) cross-examine witnesses and

(iv) present arguments in support of or against the allegations of the petition

(B) *Trial Order* The order of the hearing shall be as follows

(i) counsel who drafted and filed the petition pursuant to Rule 53 may make an opening statement confining the statement to the facts expected to be proved, and

(ii) other counsel in order determined by the court, may then make an opening statement or may make the statement immediately before offering evidence. The statement shall be confined to a statement of the facts expected to be proved, and

(iii) counsel who drafted and filed the petition pursuant to Rule 53 shall offer evidence in support of the petition, and

(iv) other counsel, in order determined by the court, may offer evidence on behalf of the person they represent, and

(v) counsel who drafted and filed the petition pursuant to Rule 53 may offer evidence in rebuttal, and

(vi) other counsel, in order determined by the court, may offer evidence in rebuttal, and

(vii) when evidence is presented by counsel, other counsel may, in order determined by the court, cross examine witnesses and

(viii) at the conclusion of the evidence, counsel other than counsel who drafted and filed the petition pursuant to Rule 53, in order determined by the court, may make a closing statement, and

(ix) counsel who drafted and filed the petition pursuant to Rule 53 may then make a closing statement

59 04 Evidence

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

59 05 Standard of Proof

To be proved at trial allegations of the petition must be proved by clear and convincing evidence

59 06 Finding on Petition

Within fifteen (15) days of the conclusion of the trial the court shall make a finding that the allegations of the petition have or have not been proved For good cause the court may extend this period for an additional fifteen (15) days All findings shall be in writing or on the record The court shall dismiss the petition if the allegations have not been proved

59 07 Further Proceedings

If the court makes a finding that the allegations of a petition alleging dependency neglect or neglected and in foster care have been proved the court shall schedule further proceedings pursuant to Rule 61

If the court terminates parental rights of both parents or of the only known living parent the court shall make orders pursuant to Minnesota Statutes, section 260 242

If the matter is a review of out of home placement the court shall make Findings and Orders pursuant to Minnesota Statutes, section 260 192

Rule 60 Motion for New Trial

60 01 New Trial

Subdivision 1 Generally In granting a new trial the court may either

- (a) conduct a completely new trial or
- (b) open the previous trial and take additional testimony or evidence

Subd 2 Stay of Previous Finding If the court grants a new trial the court shall stay the finding that the allegations of the petition have been proved

Subd 3 Finding Upon conclusion of the trial the court shall make a finding pursuant to Rule 59 06

60 02 Grounds

The court on written motion of counsel for a participant or the county attorney may grant a new trial on any of the following grounds

- (a) irregularity in the proceedings of the court, any court order or court abuse of discretion, whereby a person was deprived of a fair trial or
- (b) misconduct of counsel or
- (c) fraud, misrepresentation or other conduct of any person with the right to participate, their counsel guardian ad litem or the county attorney or
- (d) accident or surprise which could not have been prevented by ordinary prudence or
- (e) material evidence newly discovered which with reasonable diligence could not have been found and produced at the trial, or
- (f) errors of law occurring at the trial and objected to at the time or if no objection is required assigned in the motion or
- (g) the finding that the allegations of the petition are proved is not justified by the evidence or is contrary to law or
- (h) if required in the interests of justice

60 03 Procedure

Subdivision 1 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 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 2 Time for Motion Notice of a motion for a new trial shall be served pursuant to Rule 44 within fifteen (15) days after the finding that the allegations of the petition are proved. The motion shall be heard within thirty (30) days after the finding that the allegations of the petition are proved unless the time for the hearing is extended by the court for cause shown within the thirty (30) day period.

Subd 3 Time for Serving Affidavits When a motion for new trial is based on affidavits, they shall be served with the notice of motion. The county attorney and any person with the right to participate shall have ten (10) days after such service in which to serve opposing affidavits pursuant to Rule 45. The period may be extended by the court upon an order extending the time for hearing under this rule. The court may permit reply affidavits.

Subd 4 Joinder of Motions Any motion to vacate the findings that the allegations are proved shall be joined with a motion for a new trial.

60 04 New Trial on Court's Own Motion

The court on its own motion within fifteen (15) days after the findings that the allegations are proved with the consent of counsel for the persons with the right to participate and the county attorney, may order a new trial upon any of the grounds specified in Rule 60 02.

Rule 61 Adjudication

61 01 Adjudication

If the court finds that the allegations of a petition alleging dependency, neglect, or neglected and in foster care are proved, the court shall adjudicate the child as dependent, neglected or neglected and in foster care or withhold adjudication of the child.

61 02 Withholding Adjudication

When it is in the best interests of the child or the child's parents to do so, the court may withhold an adjudication.

The court may withhold adjudication for a period not to exceed ninety (90) days from the finding that the allegations of the petition have been proved. The court may extend the withholding of adjudication for an additional successive period not to exceed ninety (90) days.

During the withholding of an adjudication the court may enter an order pursuant to Minnesota Statutes, section 260 191, subd. 1.

61 03 Further Proceedings

If the court makes an adjudication the court shall schedule further proceedings pursuant to Rule 62.

Rule 62 Disposition

62 01 Generally

After an adjudication of dependency, neglected or neglected and in foster care or after terminating parental rights, pursuant to Rule 61, the court may conduct a disposition hearing immediately or continue the matter for a disposition hearing at a later time.

Dispositions in regard to review of out of home placement matters shall be pursuant to Minnesota Statutes, section 260 192 and Minnesota Statutes, section 124 2129, subd. 4.

62 02 Timing

The court shall make a deposition of the matter

(a) within forty–five (45) days from the finding of the allegations of the petition have been proved for a child not placed outside the home by court order pursuant to Minnesota Statutes section 260 172 and in no matter longer than one hundred eighty (180) days from the findings that the allegations of the petition have been proved, or

(b) within fifteen (15) days from the finding of the allegations of the petition have been proved for a child placed outside the home by court order pursuant to Minnesota Statutes, section 260 172 and in no matter longer than thirty (30) days from the findings that the allegations of the petition have been proved

62 03 Predisposition Reports

Subdivision 1 Investigations and Evaluations At any time after the filing of a petition, the court may order upon its own motion or the motion of the county attorney or counsel for a person with the right to participate

(a) an investigation of the personal and family history and environment of the child and

(b) medical psychological or chemical dependency evaluations of the child and any participant

Subd 2 Advisory The court shall advise the persons 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 3 Filing and Inspection of Reports The person making the report shall file the report forty–eight (48) hours prior to the time scheduled for the hearing and the reports shall be available for inspection release to and copying by the county attorney and counsel and guardian ad item for persons with the right to participate When the child or the child's parent(s) and guardian are not represented by counsel, the court may limit the inspection of reports by the child or the child's parent(s) and guardian but not their counsel or guardian ad item if the court determines it is in the best interest of the child

Subd 4 Discussion of Contents of Reports The person making the predisposition report shall discuss the contents of the report with all persons who have exercised the right to participate who are capable of understanding the contents of the report

Subd 5 Discussion of Content of Report – Limitation by Court The court may limit the extent of the discussion of the contents of the predisposition report with the persons who have the right to participate if the court finds the limitation to be in the best interests of the child The limitation may be made

(a) on the court's own motion or

(b) upon the objection in writing or on the record by counsel or guardian ad item for a person who has the right to participate, or

(c) on the written request of the person making the predisposition report

62 04 Hearing

Subdivision 1 Procedure Disposition hearings shall be separate from the trial pursuant to Rule 59 and the adjudication pursuant to Rule 61

Disposition hearings shall be conducted in an informal manner designed to facilitate opportunity for all participants to be heard

Subd 2 Evidence The court may receive any information except privileged communications, that is relevant to the disposition of the cause including reliable hearsay and opinions

62 05 Order

The disposition order made by the court shall contain written findings of fact to support the disposition ordered and shall also set forth in writing the following information

- (a) a disposition plan, and
- (b) why the best interests of the child are served by the disposition ordered, and
- (c) what alternative dispositions were recommended to the court and why such recommendations were not ordered

62 06 Informal Review

Subdivision 1 Timing The court shall review all disposition orders at least every six (6) months

Subd 2 Modification of Disposition Upon review the court may modify the disposition when

(a) there appears to be a change of circumstances sufficient to indicate that a change of disposition is necessary, or

(b) it appears that a disposition is inappropriate Within ten (10) days of a modification of a disposition the court shall inform in writing those persons entitled to notice pursuant to Rule 44 of the modification of the disposition and the right to a formal review hearing pursuant to Rule 62 07 Subd 1

62 07 Formal Review

Subdivision 1 Formal Review Hearing upon Written Objection to Modification Counsel for those persons with the right to participate and the county attorney may object in writing to a modification of disposition and demand a formal review hearing by filing a written objection with the court within ten (10) days of being informed of the modification

Upon an objection to a modification of disposition being filed with the court, the court shall order a formal review hearing be held within ten (10) days of the filing of the objection

Subd 2 Formal Review Hearing Upon Written Request Counsel for those persons with the right to participate and the county attorney may request a formal review hearing or the court may hold a formal review hearing on its own motion when

(a) there appears to be a change of circumstances sufficient to indicate that a change of disposition is necessary or

(b) it appears that the disposition is inappropriate

A request for a formal review hearing shall be in writing and shall list the reasons supporting the request Upon a request for a formal review hearing being filed with the court, the court shall within ten (10) days make a finding that there is good cause to believe that (a) or (b) above exists If the court finds from the request for a formal review that there is good cause to believe that (a) or (b) above exists the court shall hold a formal review hearing within ten (10) days of the finding If the court finds from the request for a formal review that there is not good cause to believe that (a) or (b) above exists the court shall inform the person making the request that the request has been denied

Subd 3 Notice Notice of the formal review hearing shall be given to those persons entitled to notice pursuant to Rule 44

Subd 4 Procedure Formal review hearings shall be conducted pursuant to Rule 62 04

Rule 63 Appeal

63 01 Appeal

Subdivision 1 Appealable Orders Any person with the right to participate may appeal to the Court of Appeals from a final order of the court

Subd 2 Procedure The procedure upon appeal shall be as follows

(A) *Stay* An appeal does not stay the order of the court but the Court of Appeals may in its discretion and upon application stay the order

(B) *Notice of Appeal* Within thirty (30) days of the filing of the appealable order, the person appealing shall file a notice of appeal with the clerk of appellate courts together

with proof of service upon all other persons who exercised their right to participate and upon the court administrator for the district court. Failure to file proof of service does not deprive the Court of Appeals of jurisdiction over the appeal, but is grounds only for such action as the Court of Appeals deems appropriate, including dismissal of the appeal.

(C) Transcript Affidavits Papers Files Exhibits The Minnesota Rules of Civil Appellate Procedure to the extent applicable shall govern the transcript of the proceedings and the transmission of the transcript and record to the Court of Appeals.

(D) Attorney's Fee Upon appeal if the child or the child's parent(s) or guardian cannot afford the costs of appeal, these costs shall be paid at public expense in whole or in part depending on the ability of the child, and the child's parent(s) to pay.

Subd 3 Cross-Appeal Upon appeal by a person with the right to participate, any other person with the right to participate may obtain review of any pretrial order which will adversely affect that person by filing notice of cross-appeal with the clerk of the appellate courts together with proof of service upon counsel for the other persons who exercised their right to participate and the person who appealed and the court administrator of the district court within ten (10) days after service of notice of the appeal. Failure to serve the notice does not deprive the Court of Appeals of jurisdiction over the cross-appeal but is grounds only for such action as the Court of Appeals deems appropriate, including a dismissal of the cross-appeal.

(Amended effective March 1, 1990)

63 02 Court Hearing Appeal

Appeal from a District Court An appeal from a district court juvenile court is taken directly to the Court of Appeals in the same manner in which appeals are taken in civil actions.

(Amended effective March 1, 1990)

Rule 64 Records

64 01 Generally

Juvenile court records include

- (a) all documents filed with the court, and
- (b) all documents maintained by the court and
- (c) all reporter's notes and tapes, electronic recordings and transcripts of hearings and trials

64 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.

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 and Guardian Ad Litem Juvenile court records of the child shall be available for inspection, copying and release to the child's counsel and guardian ad litem without a court order.

(C) County Attorney Juvenile court records shall be available for inspection, copying or release to the county attorney. However, if the matter has not had court action taken on it for over one (1) year, the court may require an ex parte showing by the county attorney that inspection or copying of the court records is necessary and in the best interest of the child, public safety or the functioning of the juvenile court system.

(D) Counsel and Guardian Ad Litem for Child's Parent(s) and Guardian Juvenile court records shall be available for inspection by counsel and guardian ad litem for the child's parent(s) and guardian.

(E) Counsel for Petitioner Juvenile court records shall be available for inspection, copying or release to counsel for a petitioner who has the right to participate pursuant to Rule

39 05 However if the court no longer has jurisdiction over the matter the court may require an ex parte showing by counsel that inspection copying or release of the court records is necessary and in the best interest of the child public safety or the functioning of the juvenile court system

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

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

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

(iii) 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

(i) in the best interests of the child, or

(ii) in the interests of public safety or

(iii) necessary for the functioning of the juvenile court system

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

64 03 Court Rule May Define Process

All inspection and release of juvenile court records may be subject to individual court rules to provide for an efficient, just and orderly process of allowing inspection copying, disclosure or release

Rule 65 Timing for Delinquency, Petty, Traffic and Juvenile Protection Matters

65 01 Computation

Unless otherwise provided by statute 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, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday 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 Birthday (President's Day), Memorial Day, Independence Day, Labor Day, Veteran's 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

(Amended effective March 1 1990)

65 02 Additional Time After Service by Mail

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

APPENDIX OF PROPOSED FORMS

Effective August 1, 1996

Statement of Rights

Delinquency Proceedings

You have been charged with a delinquent act by a document filed in the _____ County Juvenile Court You have the following rights

- 1 The right to understand the charge(s) against you
- 2 The right to be represented by an attorney If you cannot afford an attorney, the judge will appomt an attorney for you at public expense The judge may order you or your parent(s) to pay some or all of the attorney expense dependmg on the ability to pay You may not be represented in court by anyone who is not an attorney even if that person is your parent
- 3 The right to plead guilty, plead not guilty or remain silent If you remain silent, the judge will enter a not guilty plea for you and the case will go to trial
- 4 If you plead not guilty you have additional rights including
 - a The right to a trial before a judge
 - b At the trial the state is required to present witnesses to prove beyond a reasonable doubt that you committed the offense(s),
 - c The right to cross-examine witnesses called by the state
 - d The right to subpoena witnesses (get a court order for someone to appear) and present evidence on your own behalf and
 - e The right not to testify or to give an explanation of your actions
- 5 If you plead guilty, you give up the rights listed in paragraph 4
- 6 The judge will ask you what you did The judge cannot accept your admission unless you admit doing something which is against the law
- 7 Your plea must be made freely and voluntary, without threats or promises by anyone
- 8 If you plead guilty or the judge finds you committed an offense, the judge may
 - a Counsel you and your parent(s) legal guardian(s) or legal custodian(s)
 - b Place you on probation in your own home under conditions established by the court
 - c Transfer your legal custody under court supervision and place you out of your home,
 - d Transfer your legal custody by commitment to the Commissioner of Corrections
 - e Order restitution of any damage done to a person(s) or property,
 - f Order special treatment or care for your physical or mental health
 - g Recommend to the Commissioner of Pubhc Safety that your driving license be canceled or revoked,
 - h Order community work service or a fine up to \$700, and
 - 1 If a gun or dangerous weapon was involved, consider imposition of additional consequences
- 9 If you plead guilty or the judge finds you committed a felony after your 14th birthday, this may be a basis for additional jail or prison time if you commit a felony and are sentenced as an adult before your 25th birthday
- 10 If you plead guilty or the judge finds you committed a felony this may be used to decide if your case should be transferred to adult court or treated as an extended jurisdiction juvenile if you commit another felony
- 11 Your parent(s), legal guardian(s) or legal custodian(s) may not participate in the hearing until you either plead guilty or the judge finds you committed the offense At that

time your parent(s) legal guardian(s) or legal custodian(s) has the right to present information to the judge and may be represented by an attorney

IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS, ASK YOUR ATTORNEY BEFORE THE HEARING OR ASK THE JUDGE DURING YOUR HEARING

DATED _____

(Signature of Child)

DATED _____

(Signature of Parent)

Statement of Rights

Juvenile Petty Offender Proceedings

You have been charged with a petty offense by a document filed in the _____ County Juvenile Court. With regard to the charge(s) you have the following rights:

- 1 The right to understand the charges against you
 - 2 The right to be represented by an attorney that you hire. For certain charges, if you cannot afford an attorney, the judge will appoint an attorney for you at public expense. The judge may order you or your parent(s) to pay some or all of the attorney expense depending on the ability to pay. You may not be represented in court by anyone who is not an attorney, even if that person is your parent.
 - 3 The right to plead guilty, plead not guilty, or remain silent. If you remain silent, the judge will enter a not guilty plea for you and the case will go to trial.
 - 4 If you plead not guilty, you have additional rights including:
 - a The right to a trial before a judge
 - b At the trial, the state is required to prove beyond a reasonable doubt that you committed the offense(s)
 - c The right to cross-examine witnesses called by the state,
 - d The right to subpoena witnesses and present evidence on your own behalf, and
 - e The right not to testify or to give an explanation of your actions.
 - 5 If you plead guilty, you give up the rights listed in paragraph 4.
 - 6 The judge will ask you what you did. The judge cannot accept your plea unless you admit doing something which is against the law.
 - 7 Your plea must be made freely and voluntarily, without threats or promises by anyone.
 - 8 If you plead guilty or the judge finds you committed an offense, the judge may:
 - a Require you to pay a fine of up to \$100
 - b Require you to take part in a community service project,
 - c Require you to participate in a drug awareness program
 - d Place you on probation for up to six months,
 - e Order you to undergo a chemical use assessment and participate in an outpatient treatment program
 - f Order restitution for any damage to person(s) or property
 - g Order you to perform other activities or participate in other outpatient treatment programs deemed appropriate by the judge.
 - 9 If you plead guilty or the judge finds you committed a second or subsequent juvenile alcohol or controlled substance offense, in addition to the above penalties, the judge may:
 - a Send your driver's license or driving permit to the Commissioner of Public Safety, who shall revoke it for one year or until your 18th birthday, whichever is longer.
 - b Suspend your driver's license or driving permit for up to 90 days, but allow you to travel to work.
 - 10 Your parent(s), legal guardian(s), or legal custodian(s) may not participate in the hearing until you have either pleaded guilty or the judge finds you committed the offense. At that time, your parent(s), legal guardian(s), or legal custodian(s) has the right to present information to the judge and may be represented by an attorney.
- IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS, ASK YOUR ATTORNEY BEFORE THE HEARING. IF YOU DO NOT HAVE AN ATTORNEY, ASK THE JUDGE DURING YOUR HEARING.**

DATED _____

(Signature of Child)

DATED _____

(Signature of Parent)

Statement of Rights

Juvemle Traffic Offender Proceedings

You have been charged as a juvenile major traffic offender by a document filed in the _____ County Juvenile Court. With regard to the charges, you have the following rights:

- 1 The right to understand the charges against you
- 2 The right to be represented by an attorney that you hire. For certain charges, if you cannot afford an attorney, the judge will appoint an attorney for you at public expense. The judge may order you or your parent(s) to pay some or all of the attorney expense depending on the ability to pay. You may not be represented in court by anyone who is not an attorney, even if that person is your parent.
- 3 The right to plead guilty, plead not guilty or remain silent. If you remain silent, the judge will enter a not guilty plea for you and the case will go to trial.
- 4 If you plead not guilty, you have additional rights including:
 - a The right to a trial before a judge,
 - b At the trial the state is required to prove beyond a reasonable doubt that you committed the offense(s),
 - c The right to cross-examine witnesses called by the state
 - d The right to subpoena witnesses and present evidence on your own behalf, and
 - e The right not to testify or to give an explanation of your actions
- 5 If you plead guilty, you give up the rights listed in paragraph 4.
- 6 The judge will ask you what you did. The judge cannot accept your plea unless you admit doing something which is against the law.
- 7 Your plea must be made freely and voluntarily, without threats or promises by anyone.
- 8 If you plead guilty or the judge finds you guilty of an offense, the judge may:
 - a Reprimand you and counsel you and your parent(s), legal guardian(s) or legal custodian(s),
 - b Continue the case for a reasonable period with conditions concerning your use and operation of motor vehicles or watercraft,
 - c Require you to attend a driver improvement course
 - d Recommend to the Commissioner of Public Safety the suspension of your driver's license,
 - e If you are found to have committed two moving highway traffic violations or to have contributed to a highway accident involving death, injury or physical damage in excess of \$100, the judge may recommend cancellation of your driver's license until you are 18,
 - f Place you on probation in your own home under conditions set by the judge including reasonable rules relating to the operation and use of motor vehicles or watercraft,
 - g Order restitution of any damage to person(s) or property
 - h Order community work service or a fine up to \$700, and
 - i Order a chemical assessment for alcohol related driving offenses and charge \$75 for the assessment
- 9 Your parent(s), legal guardian(s) or legal custodian(s) may not participate in the hearing until you either plead guilty or the judge finds you committed the offense. At that time your parent(s), legal guardian(s) or legal custodian(s) has the right to present information to the judge and may be represented by an attorney.

IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS ASK YOUR ATTORNEY BEFORE THE HEARING. IF YOU DO NOT HAVE AN ATTORNEY ASK THE JUDGE DURING YOUR HEARING.

DATED _____

(Signature of Child)

DATED _____

(Signature of Parent)

Notice of the Rights of Victims in Juvenile Court

1 Right to Participation

Minnesota law (Minnesota Statutes, section 260 155, subd 1 (1994) and section 611A 01, et seq (1994)) prohibits the public from attending juvenile hearings in most cases. However, a person who has a direct interest in the case, such as a crime victim, has the following rights to participate:

- Right to have input in a pretrial diversion program decision,
- Right to object to the proposed disposition and a plea agreement,
- Right to request a speedy trial,
- Right to be present in court at the time of the dispositional hearing (sentencing), and
- Right to submit an impact statement to court orally or in writing, at the time of sentencing or dispositional hearing.

2 Right to Notification

You have a right to be notified of certain information such as the following:

- The contents of any plea agreement recommendation,
- The schedule changes in court proceedings if you have been subpoenaed or requested to testify,
- The information regarding bail hearing of arrested or detained juvenile,
- The final disposition of the case,
- The transfer of the juvenile to a less secure correctional facility,
- The release of the juvenile from a custodial institution, and
- The escape and apprehension of the juvenile from a custodial institution.

3 Right to Protection

As a victim and/or witness, you have certain rights to protection as the following:

- Right to a safe and secure waiting area during the court process,
- Right to request a law enforcement agency to withhold public access to data revealing your identity,
- Right not to give your home or business address in open court, and
- Right not to be retaliated against by employers if you were called to testify as a victim or witness.

4 Right to Financial Assistance

You may be eligible for financial assistance from the state through the Crime Victims' Reparations Board if you have suffered economic loss as a result of a violent crime. Also, you may request the court to order the juvenile to pay restitution pursuant to Minnesota Statutes, section 611A 04. If the juvenile fails to pay restitution as ordered, you have the right to ask the juvenile's probation officer to request a probation review hearing.

Juvenile Court Proceedings

Detention

A juvenile can be detained at his or her home subject to electronic home monitoring, in foster care, at a shelter care facility, at a secure detention facility, at a detoxification, chemical dependency or psychiatric facility, or at an adult jail. Most juveniles in detention must come before the court within 36 hours of being taken into custody for a detention hearing.

Arraignment

At the arraignment hearing, the juvenile will appear in court and be asked to plead guilty or not guilty to the charges. Juveniles are entitled to representation by an attorney. A plea of guilty leads to a disposition (sentencing) hearing. If a juvenile pleads not guilty, there will be a trial.

Pretrial Hearing

In most cases, the judge orders a pretrial hearing to decide issues of law before trial.

Trial

A juvenile has the same legal protections during trial as an adult charged with a similar crime. Except for Extended Jurisdiction Juvenile (EJJ) jury trials, juvenile trials are held before the judge who will decide whether the juvenile is guilty or not guilty. If the petition has been proved, there will be a disposition hearing.

Disposition

The disposition may include restitution, fines, community service, probation, out-of-home placement, counseling or treatment, and victim/offender mediation. The court will take into consideration the seriousness of the offense, the child's prior history of offenses, and available programs and services.

STATE OF MINNESOTA
COUNTY OF _____

DISTRICT COURT
JUDICIAL DISTRICT _____

IN THE MATTER OF THE WELFARE OF

Juvenile

FILE NO _____
**APPLICATION TO ENTER A GUILTY PLEA
IN JUVENILE DELINQUENCY CASES**

My name is _____

I am _____ years old My birthday is _____, 19____
(month) (date) (year)

I have a copy of the Charging Document (the papers saying that I am delinquent) I have read the papers (OR I cannot read, but my lawyer read the papers to me)

I understand that

I CHARGES

1 I am charged with the following crime _____
(offense)

_____ committed on or about _____,
(month) (date)

19____, m _____ County
(year)

2 If I were charged with this crime as an adult, it would be a (felony) (gross misdemeanor) (misdemeanor) offense

II LAWYER

3 I have a lawyer whose name is _____
My Lawyer and I have talked about the charges and all of my rights I understand what they mean I have had enough time to talk with my lawyer

4 We have talked about all possible defenses and how useful they will be for me

5 We have also talked about the strengths and weaknesses of the case against me

6 I know I do not have to admit anything

III TRIAL

7 I know I have a right to a trial within thirty (30) days if I am being held in detention or within sixty (60) days if I am not held in detention

8 If I have a trial, I know that

(a) I am presumed to be innocent unless the charge against me is proved beyond a reasonable doubt by the state
I do not need to prove my innocence

(b) I could testify and tell my side of the story if I choose Or I could remain silent If I choose to remain silent, no one would hold that against me in any way

(c) I could get a subpoena (court order) from the court to make people come to court to testify for me I could be there to hear and question any people who come to testify against me

9 I understand that if I plead guilty to the charge against me, I give up my right to a trial

10 I understand that if I plead guilty to the charge against me, I will be telling the court that I did it

11 Knowing my right to a trial, I now give up this right

IV GUILT

12 My lawyer has told me that the judge will not accept a plea from someone who says they are innocent I am not saying that I am innocent

V PLEA AGREEMENT

13 My lawyer has told me and I understand

(a) That he/she talked about my case with the prosecutor, and that my lawyer and the prosecutor agreed to the following plea agreement

(b) If the court does not accept this agreement

(1) I have a right to withdraw my plea of guilt and have a trial

(2) Anything that I said in court about my plea could not be used against me

14 Except for the agreement between my lawyer and the prosecuting attorney, no one has made any promises or threats to me to get me to plead guilty

15 I understand that if the court accepts the guilty plea, there will be a disposition, or sentencing

16 The most serious disposition could be that the court could send me to a state institution until my 19th birthday

17 If the court allows me to stay in the community, the court could place me on probation and require me to pay a fine, pay restitution do community work service participate in treatment, live in a local community or group home or follow other special rules of probation

18 If I fail to obey the court order, I could be arrested and placed in detention

19 I could be on probation until my 19th birthday and during that time, the court can change the disposition

20 If the facts in the petition are found to be true, I will have a juvenile record This record could be used against me if I am charged with a crime as an adult This record could result in a longer sentence if I am convicted of a crime when I am an adult This record could be used to decide if I will be treated as an adult if I commit another crime when I am still a child This could lead to more serious charges if I get in trouble again

21 **I have read this petition to plead guilty and I understand it By signing this petition, I am telling the court that I understand the rights I am giving up and I want to plead guilty to the charge of** _____

Date _____

Child

Date _____

Child's Counsel

STATE OF MINNESOTA
COUNTY OF _____

DISTRICT COURT
_____ JUDICIAL DISTRICT

IN THE MATTER OF THE WELFARE OF

_____ A CHILD

FILE NO _____
NOTICE IN LIEU OF SUMMONS

TO The above-named child and to the child's parent(s) legal guardian legal custodian or person having custody and control of child _____

ADDRESS _____

PLEASE take notice that charges have been filed with this Court alleging that the child is a

- juvenile traffic offender
- juvenile petty offender
- delinquent

and the Court has directed that a hearing be held in this matter at the _____ Court-house Courtroom _____ Minnesota on _____, 19__ at _____ before a Judge of District Court

YOU ARE entitled to have a summons requiring your appearance served upon you For your convenience the Court has directed that this notice be mailed to you instead of issuing a summons However if you do not appear at the hearing, a summons will be issued

- Attached is a copy of the
- charging document
 - court order
 - motion
 - affidavit
 - other _____

ALSO attached is a statement describing the purpose of the hearing the possible consequences of the hearing and an explanation of the child's basic rights, including the parent(s) or guardian's right to participate separately from the child if the Court finds that the allegations have been proved **PLEASE READ ATTACHED ITEMS CAREFULLY**

TAKE NOTICE THAT if you fail to appear in response to this notice, the Court may conduct a hearing without your presence and grant appropriate relief Further information concerning the date and consequences of a later hearing if any, may be obtained from the Court by a request in writing

DATED _____

BY THE COURT

Court Administrator

BY _____

Served by regular mail
Date _____ by _____

STATE OF MINNESOTA
COUNTY OF _____

DISTRICT COURT
JUDICIAL DISTRICT _____

IN THE MATTER OF THE WELFARE OF

_____ A CHILD

FILE NO _____
SUMMONS

TO The above-named child and to the child's parent(s), legal guardian, legal custodian or person having custody and control of child _____

ADDRESS _____

PLEASE take notice that a petition has been filed with this Court alleging that the child is _____ and the Court has directed that a hearing be held in this matter at the _____ Courthouse, Courtroom _____, _____, Minnesota on _____, 19__ before a Judge of District Court

- Attached is a copy of the
- charging document
- court order
- motion
- affidavit
- other _____

ALSO attached is a statement describing the purpose of the hearing, the possible consequences of the hearing and an explanation of the child's basic rights, including the rights of the parent(s) or guardian **PLEASE READ ATTACHED ITEMS CAREFULLY**

TAKE NOTICE THAT if you fail to appear in response to this Summons, the Court may (1) issue a warrant for your arrest, or (2) conduct a hearing without your presence and grant appropriate relief Further information concerning the date and consequences of later hearings, if any, may be obtained from the Court by a request in writing

DATED _____

BY THE COURT

Court Administrator

BY _____
Deputy

Served by certified mail
Date _____ By _____

Served personally
Date _____ By _____

STATE OF MINNESOTA
COUNTY OF

DISTRICT COURT—JUVENILE DIVISION
JUDICIAL DISTRICT

In the Matter of the Welfare of

**Prosecutor's Request
for Disclosure**

File No

Pursuant to Rule 10 05 of the Minnesota Rules of Procedure for Juvenile Courts, the County Attorney requests the Juvenile to make disclosure of the following items which the Juvenile intends to introduce into evidence at the trial, certification, or Extended Jurisdiction Juvenile hearing (1) documents and tangible objects, (2) reports of examinations and tests, (3) notice of defenses, (4) names, addresses, and record of criminal convictions or delinquency adjudications of Juvenile's witnesses, (5) statements of Juvenile's witnesses, (6) details of and witnesses to the defense of alibi and (7) record of Juvenile's prior proven or admitted delinquency offenses

This request for Disclosure incorporates by reference the language of Rule 10 05 and shall be deemed to be a request for disclosure of all information to which the County Attorney is entitled under the provisions of that Rule

DATED

County Attorney

(Name)

Assistant County Attorney

(Address)

STATE OF MINNESOTA
COUNTY OF

DISTRICT COURT—JUVENILE DIVISION
JUDICIAL DISTRICT

In the Matter of the Welfare of

**Prosecutor Notice of
Evidence and Identification
Procedures**

File No

TO THE ABOVE-NAMED JUVENILE AND COUNSEL FOR JUVENILE

Pursuant to Rule 10 02 of the Minnesota Rules of Procedure for Juvenile Courts you are advised that in the above-captioned case, the Prosecutor has

_____ Evidence obtained as a result of a search search and seizure, wiretapping, or other forms of electronic or mechanical eavesdropping,

_____ Confessions admissions or statements in the nature of confessions made by the child,

_____ Evidence discovered as a result of confessions, admissions or statements in the nature of confessions made by the child,

_____ Identification procedures used during the investigation were

_____ Line-ups

_____ Observations of the respondent

_____ Exhibition of photographs

_____ Other _____

_____ None of above is known to the prosecution at this time you will be notified if any is discovered

DATED

County Attorney

Assistant County Attorney
(Address)

Rule on Public Access to Records Relating to Open Juvenile Protection Proceedings

TABLE OF HEADNOTES

Subdivision

- 1 Presumption of Public Access to Records
- 2 Effective Date
- 3 Applicability of Rules of Public Access to Records of the Judicial Branch
- 4 Records That Are Not Accessible to the Public
- 5 Access to Exhibits
- 6 Access to Court Information Systems
- 7 Protective Order
- 8 Case Captions
- 9 Statutes Superseded

Revisor's Note: Supreme Court Order C2-95-1476 dated May 28, 1998 promulgating Rule on Public Access to Records Relating to Open Juvenile Protection Proceedings provides in part:

"The inclusion of Advisory Committee Comments is made for convenience and does not reflect court approval of the comments made therein."

TEXT OF RULES

Subdivision 1 Presumption of Public Access to Records

Except as otherwise provided in this rule, all case records relating to the pilot project on open juvenile protection proceedings are presumed to be accessible to any member of the public for inspection, copying, or release. For purposes of this rule, 'open juvenile protection proceedings' are all matters governed by the juvenile protection rules promulgated by the Minnesota Supreme Court.

(Adopted May 28, 1998)

Subdivision 2 Effective Date

All case records deemed accessible under this rule and filed on or after June 22, 1998 shall be available to the public for inspection, copying, or release. All case records deemed accessible under this rule and filed prior to June 22, 1998 shall not be available to the public for inspection, copying, or release.

(Adopted May 28, 1998)

Subdivision 3 Applicability of Rules of Public Access to Records of the Judicial Branch

Except where inconsistent with this rule, the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court shall apply to records relating to open juvenile protection proceedings. Subdivisions 1(a) and 1(c) of Rule 4 of the Rules of Public Access to Records of the Judicial Branch, which prohibit public access to domestic abuse restraining orders and judicial work products and drafts, are not inconsistent with this rule.

(Adopted May 28, 1998)

Subdivision 4 Records That Are Not Accessible to the Public

Except for exhibits identified in subdivision 5 of this rule, the following case records relating to open juvenile protection proceedings shall not be accessible to the public:

(a) transcripts, stenographic notes and recordings of testimony of anyone taken during portions of proceedings that are closed by the presiding judge.

- (b) audio tapes or video tapes of a child alleging or describing physical abuse sexual abuse or neglect of any child,
- (c) victim's statements,
- (d) portions of juvenile court records that identify reporters of abuse or neglect
- (e) HIV test results
- (f) medical records and chemical dependency evaluations and records psychological evaluations and records, and psychiatric evaluations and records,
- (g) sexual offender treatment program reports,
- (h) portions of photographs that identify a child,
- (i) application for ex parte emergency protective custody order and any resulting order until the hearing where all parties have an opportunity to be heard on the custody issue provided that if the order is requested in a CHIPS petition, only that portion of the petition that requests the order shall be deemed to be the application for purposes of this section (i),
- (j) records or portions of records that specifically identify a minor victim of an alleged or adjudicated sexual assault,
- (k) notice of pending court proceedings pursuant to 25 U S C section 1912 (the Indian Child Welfare Act),
- (l) records or portions of records which the court in exceptional circumstances has deemed inaccessible to the public, and
- (m) records or portions of records that identify the home or institution in which a child is placed pursuant to a foster care placement, pre-adoptive placement, or adoptive placement (Adopted May 28, 1998)

Subdivision 5 Access to Exhibits

Case records received into evidence as exhibits shall be accessible to the public unless subject to a protective order
(Adopted May 28 1998)

Subdivision 6 Access to Court Information Systems

Except where authorized by the district court, there shall be no direct public access to juvenile court case records maintained in electronic format in court information systems
(Adopted May 28 1998)

Subdivision 7 Protective Order

Upon motion and hearing, a court may issue an order prohibiting public access to juvenile court case records that are otherwise accessible to the public when the court finds that there are exceptional circumstances supporting issuance of the order The court may also issue such an order on its own motion and without a hearing pursuant to subdivision 4(l) of this rule, but shall schedule a hearing on the order as soon as possible at the request of any person
(Adopted May 28, 1998)

Subdivision 8 Case Captions

All juvenile protection files opened in a pilot project county on and after June 22, 1998, shall be captioned in the name of the parent(s) or the child's legal custodian or legal guardian as follows ' In the matter of child(ren) of _____, parent/legal guardian/legal custodian ''
(Adopted May 28, 1998)

Subdivision 9 Statutes Superseded

Minnesota Statutes, section 260 161, subdivision 2, as amended by 1998 Minn Laws, chapter 406, article 1, section 28 and 1998 Minn Laws chapter 407, article 9, section 27, and

all other statutes inconsistent or in conflict with this rule are superseded insofar as they apply to public access to records of open juvenile protection proceedings
(Adopted May 28 1998)

Advisory Committee Comment—1998

Under subdivision 1 application of this rule is limited to case records of the pilot project on open juvenile protection proceedings which includes all proceedings identified in Rule 37 of the Minnesota Rules of Juvenile Procedure (1997) and any successor provision See Order Establishing Pilot Project On Open Hearings In Juvenile Protection Matters #C2-95-1476 (Minn S Ct filed Jan 22 1998) Rule 37 as currently written does not include adoption proceedings Thus this rule would not apply to any case records relating to adoption proceedings The Committee is aware that the juvenile protection rules are in the process of being updated by another advisory committee To the extent that there are substantive changes made to Rule 37 those changes would effect the pilot project

Subdivision 1 establishes a presumption of public access to juvenile court case records and exceptions to this presumption are set forth in the remaining subdivisions Subdivision 2 specifies the effective date of the pilot project as the cut off for public access Case records deemed accessible under this rule and filed on or after June 22 1998 shall be available to the public for inspection copying or release Case records filed prior to June 22 1998 shall not be available to the public for inspection copying or release under this rule public access to these records is governed by existing rules and statutes

Subdivision 3 incorporates the provisions of the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court (Access Rules) except to the extent that the Access Rules are inconsistent with this rule The Access Rules establish the procedure for requesting access the timing and format of the response and an administrative appeal process The Access Rules also define case records as a subcategory of records maintained by a court Thus case records would not include items that are not made a part of the court file such as notes of a social worker or guardian ad litem Aggregate statistics on juvenile court cases that do not identify any participants or a particular case are included in the administrative records category and are accessible to the public under the Access Rules Such statistics are routinely published by the courts in numerous reports and studies These procedures and definitions are consistent with this rule

One significant aspect of both this rule and the Access Rules is that they govern public access only Participants in a juvenile protection case may have greater access rights than the general public See e.g. Minn R Juv P 64.02 subdivision 2 (1997)

Subdivision 3 preserves the confidentiality of domestic abuse restraining orders issued pursuant to Minnesota Statutes section 518B.01 (1996) The address of a petitioner for a restraining order under section 518B.01 must not be disclosed to the public if nondisclosure is requested by the petitioner Minnesota Statutes section 518B.01 subdivision 3b (1996) All other case records regarding the restraining order must not be disclosed until the temporary order made pursuant to subdivision 5 or 7 of section 518B.01 is served on the respondent Access Rule 4 subdivision 1(a) (1998)

Subdivision 3 prohibits public access to judicial work products and drafts These include notes memoranda and drafts prepared by a judge or court employed attorney law clerk legal assistant or secretary and used in the process of preparing a decision or order except the official court minutes prepared pursuant to Minnesota Statutes section 564.24-25 (1996) Access Rule 4 subd 1(c) (1998)

The court services provision of Rule 4, subdivision 1(b) of the Access Rules is inconsistent with this rule The advisory committee is of the opinion that public access to reports and recommendations of social workers and guardians ad litem which become case records is an integral component of the increased accountability that underlies the pilot project Court rulings will necessarily incorporate significant portions of what is set forth in those reports and similar information is routinely disclosed in family law cases

Subdivision 4(a) prohibits public access to testimony of anyone taken during portions of a proceeding that are closed by the presiding judge The Supreme Court has directed that

hearings under the pilot project may be closed or partially closed by the presiding judge only in exceptional circumstances Order Establishing Pilot Project On Open Hearings In Juvenile Protection Matters #C2-95-1476 (Munn S Ct filed Jan 22 1998)

Subdivision 4(b) prohibits public access to audio tapes and video tapes of a child alleging or describing physical abuse sexual abuse or neglect of any child This includes all tapes made pursuant to Minnesota Statutes section 626 561 subdivision 3 (1996) during the course of a child abuse assessment criminal investigation or prosecution This is consistent with Minnesota Statutes section 13 391 (1996) which prohibits an individual who is a subject of the tape from obtaining a copy of the tape without a court order See also *In re Application of KSTP Television v Ming Sen Shue* 504 F Supp 360 (D Munn 1980)(television station not entitled to view and copy 3 hours of video tapes received in evidence in criminal trial) Similarly subdivision 4(c) prohibits public access to victims statements and this includes written records of interviews of victims made pursuant to Minnesota Statutes section 626 561 subdivision 3 (1996) This is consistent with Minnesota Statutes sections 609 115 subdivisions 1 5 609 2244 611A 037 (1996 and 1997 Supp) (pre-sentence investigations to include victim impact statements no public access, domestic abuse victim impact statement confidential)

Although victims statements and audio tapes and video tapes of child alleging or describing abuse or neglect are inaccessible to the public under subdivisions 4(b) and 4(c) this does not prohibit the attorneys for the parties or the court from including information from the statements or tapes in the petition court orders and other documents that are otherwise accessible to the public In contrast subdivision 4(d) prohibits public access to information identifying reporters of abuse or neglect By precluding public access to information identifying reporters of abuse or neglect the advisory committee did not intend to preclude public access to any other information included in the same document Thus courts and court administrators must redact identifying information from otherwise publicly accessible documents and then make the edited documents available for inspection and copying by the public Similarly subdivision 4(e) requires that courts and court administrators redact from any publicly accessible juvenile court record any reference to HIV test results and subdivision 4(h) requires administrators to redact the face or other identifying features in a photograph of a child

The prohibition of public access to the identity of reporters of abuse or neglect under subdivision 4(d) is consistent with state law governing access to this information in the hands of social services law enforcement court services schools and other agencies Minnesota Statutes section 626 556 (1996 and Supp 1997) Subdivision 4(d) is also intended to help preserve federal funds for child abuse prevention and treatment programs See 42 U S C sections 5106a(b)(2)(A) 5106a(b)(3) (1998), 45 C FR sections 1340 1 to 1340 20 (1997) Subdivision 4(d) does not, however apply to testimony of a witness taken during a proceeding that is open to the public

Subdivision 4(e) prohibits public access to HIV test results This is consistent with state and federal laws regarding court ordered testing for HIV Minnesota Statutes section 611A 19 (1996) (defendant convicted for criminal sexual conduct no reference to the test the motion requesting the test the test order or the test results may appear in the criminal record or be maintained in any record of the court or court services) 42 U S C 14011 (1998) (defendant charged with crime test result may be disclosed to victim only) The Committee is also aware that federal funding for early intervention services requires confidential treatment of this information 42 U S C sections 300ff-61(a) 300ff-63 (1998)

Subdivisions 4(f) and 4(g) prohibit public access to medical records chemical dependency evaluations and records psychological evaluations and records psychiatric evaluations and records and sex offender treatment program reports, unless admitted into evidence (see subdivision 5) This is consistent with public access limitations in criminal and juvenile delinquency proceedings that are open to the public See e.g. Minnesota Statutes, section 609 115 subdivision 6 (1996) (presentence investigation reports) Practitioners and the courts must be careful not to violate applicable federal laws Under 42 U S C section 290dd-2 (1998) records of all federally assisted or regulated substance abuse treatment programs including diagnosis and evaluation records and all confidential communications made therein except information required to be reported under a state mandatory child

abuse reporting law are confidential and may not be disclosed by the program unless disclosure is authorized by consent or court order. Thus practitioners will have to obtain the relevant consents or court orders including protective orders before disclosing certain medical records in their reports and submissions to the court. See 42 C.F.R. sections 2.1 to 2.67 (1997) (comprehensive regulations providing procedures that must be followed for consent and court-ordered disclosure of records and confidential communications).

Although similar requirements apply to educational records under the Federal Educational Rights and Privacy Act (FERPA) 20 U.S.C. sections 1232g, 1417, and 11432 (1998) 34 C.F.R. sections 99.1 to 99.67 (1997) FERPA allows schools to disclose education records without consent or court order in certain circumstances including disclosures to state and local officials under laws in effect prior to November 19, 1974. 20 U.S.C. section 1232g(b)(1)(E)(i) (1998) 34 C.F.R. section 99.31(a)(5)(i)(A) (1997) Authorization to disclose truancy to the county attorney for example was in effect prior to that date and continues under current law. See Minnesota Statutes section 120.12 (1974) (superintendent to notify county attorney if truancy continues after notice to parent) 1987 Minn. Laws ch. 178, section 10 (repealing section 120.12 and replacing with current section 120.103 which adds mediation process before notice to county attorney) see also Minnesota Statutes section 260A.06–07 (1996) (referral to county attorney from school attendance review boards county attorney truancy mediation program notice includes warning that court action may be taken) Practitioners will have to review the procedures under which they receive education records from schools and where necessary, obtain relevant consents or protective orders before disclosing certain education records in their reports and submissions to the court. Additional information regarding FERPA may be found in *Sharing Information: A Guide to the Family Educational Rights and Privacy Act and Participation in Juvenile Justice Programs* (U.S. Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention, Washington, D.C. 20531, June 1997) (includes hypothetical disclosure situations and complete set of federal regulations).

Subdivision 4(i) requires administrators to redact the face or other identifying features in a photograph of a child before permitting public access. Any appropriate concern regarding public access to the remaining portions of such a photograph can be addressed through a protective order (see Subdivision 7).

Subdivision 4(i) precludes public access to an *ex parte* emergency protective custody order until the hearing where all parties have an opportunity to be heard on the custody issue. This provision is designed to reduce the risk that a parent, guardian, or custodian would try to hide a child before the child can be placed in protective custody or to take the child from custody before the court can hear the matter. See e.g. Minn. R. Juv. P. 51 (1997) (order must either direct that child be brought immediately before the court or taken to a placement facility designated by the court; parent, guardian, and custodian, if present when child is taken into custody, shall immediately be informed of existence of order and reasons why child is being taken into custody). Subdivision 4(i) also precludes public access to the application or request for the protective custody order except that if the request is made in a CHIPS petition, only that portion of the petition that requests the order is inaccessible to the public.

Subdivision 4(j) precludes public access to portions of records that specifically identify a minor victim of sexual assault. This will require court administrators to redact information from case records that specifically identifies the minor victim including the victim's name and address. Subdivision 4(j) does not preclude public access to other information in the particular record. This is intended to parallel the treatment of victim identities in criminal and juvenile delinquency proceedings involving sexual assault charges under Minnesota Statutes section 609.3471 (1996). Thus the term 'sexual assault' includes any act described in Minnesota Statutes sections 609.342, 609.343, 609.344, and 609.345. The Committee considered using the term 'sexual abuse' but felt that it was a limited subcategory of sexual assault. See Minnesota Statutes section 626.556 subdivision 2(a) (1996) ('sexual abuse' includes violations of 609.342–345 committed by person in a position of authority responsible for child's care or having a significant relationship with the child). Subdivision 4(j) does not require a finding that sexual assault occurred. An allegation of sexual assault is sufficient.

Subdivision 4(k) precludes public access to the notice of pending proceedings given to an Indian child's tribe or to the Secretary of the Interior pursuant to 25 U.S.C. section 1912(a) (1998). The notice includes extensive personal information on the child including all known information on direct lineal ancestors and requires parties who receive the notice to keep it confidential. 25 C.F.R. section 23.11(d) (e) (1997). Notices are routinely given in doubtful cases because lack of notice can be fatal to a state court proceeding. See 25 U.S.C. section 1911 (1998) (exclusive jurisdiction of tribes right to intervene transfer of jurisdiction). The Committee felt that public access to information regarding the child's tribal heritage is appropriately given whenever a tribe intervenes or petitions for transfer of jurisdiction. Subdivision 4(k) does not preclude public access to intervention motions or transfer petitions.

Subdivision 4(l) recognizes that courts may in exceptional circumstances issue protective orders precluding public access to certain records or portions of records. Exceptional circumstances is the standard promulgated by the Supreme Court for closure of portions of proceedings. See *Order Establishing Pilot Project on Open Hearings in Juvenile Protection Matters #C2-95-1476* (Minn. S. Ct. filed Jan. 22, 1998). Records of closed proceedings are inaccessible to the public under subdivision 4(a). Procedures for issuing protective orders are set forth in Subdivision 7.

Subdivision 4(m) prohibits public access to identifying information (i.e. names addresses etc.) of foster parents foster care institutions and adoptive parents and other persons and institutions providing pre-adoptive care of the child. This is consistent with the confidentiality accorded adoption proceedings. It is also designed to reduce the risk of continuing contact by someone whose parental rights have been terminated or who is a potentially dangerous family member.

Notwithstanding the list of inaccessible case records in subdivision 4(a) through 4(m) many case records of the pilot project will typically be accessible to the public. Examples include petitions other than petitions for paternity summons affidavits of publication or service certificates of representation orders hearing and trial notices subpoenas names of witnesses motions and supporting affidavits and legal memoranda transcripts and reports of a social worker or guardian ad litem. With the exception of information that must be redacted under subdivisions 4(d) 4(e) and 4(h) these records will be accessible to the public notwithstanding that they contain a summary of information derived from another record that is not accessible to the public. For example a social services or court services report recommending placement might discuss the results of a chemical dependency evaluation. Although the chemical dependency evaluation is not accessible to the public the discussion of it in the social services or court services report need not be redacted prior to public disclosure of the report. Finally it must be remembered that public access under this rule would not apply to records filed with the court prior to the effective date of the pilot project (see subdivision 2) or to reports of a social worker or guardian ad litem that have not been made a part of the court file (see subdivision 3).

Subdivision 5 of this rule permits public access to records that have been received in evidence as an exhibit unless the records are subject to a protective order (see subdivision 7). Thus any of the records identified in subdivisions 4(b) through 4(k) that have been admitted into evidence as an exhibit are accessible to the public unless there is a protective order indicating otherwise. An exhibit that has been offered but not expressly admitted by the court does not become accessible to the public under subdivision 5. Exhibits admitted during a trial or hearing must be distinguished from items attached as exhibits to a petition or a report of a social worker or guardian ad litem. Merely attaching something as an exhibit to another filed document does not render the exhibit accessible to the public under subdivision 5.

Subdivision 6 prohibits direct public access to case records maintained in electronic format in court information systems unless authorized by the court. Subdivision 6 intentionally limits access to electronic formats as a means of precluding widespread distribution of case records about children into larger private databases that could be used to discriminate against children for insurance employment and other purposes. This concern also led the Committee to recommend that case titles in the petition and other documents include only the names of the parent or other guardian, and exclude the names or initials of the children (see

subdivision 8) Subdivision 6 allows the courts to prepare calendars that identify cases by the appropriate caption. To the extent that court information systems can provide appropriate electronic formats for public access, subdivision 6 allows the court to make those accessible to the public, for example, by order of the chief judge of the judicial district.

Subdivision 7 establishes two categories of protective orders. One is made on motion of a party after a hearing, and the other is made on the court's own motion without a hearing, subject to a later hearing if requested by any person, including representatives of the media. In any case, a protective order may issue only in exceptional circumstances. See Order Establishing Pilot Project On Open Hearings In Juvenile Protection Matters, #C2-95-1476 (Minn. S. Ct. filed Jan. 22, 1998). The advisory committee felt that these procedures would provide adequate protection and flexibility during the pilot project.

The change in case captions under subdivision 8 is designed to minimize the stigma to children involved in open juvenile protection proceedings. It is more appropriate to label these cases in the name of the adults involved, who are often the perpetrators of abuse or neglect.