

JUVENILE COURT

Minnesota Rules of Juvenile Procedure

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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, subs. 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 proceedings, the sentence the trial judge actually imposed, i.e. whether incarceration was ordered, rather than the one authorized by the statute, determined whether counsel must be appointed for the indigent.

In State v. Borst, 278 Minn. 388, 154 N.W.2d 888 (1967), the Minnesota Supreme Court, using its inherent supervisory powers, anticipated the United States Supreme Court's Argersinger and Scott decisions, and shortly after Gideon, required the appointment of counsel even in misdemeanor cases "which may lead to incarceration in a penal institution." Id. at 397, 154 N.W.2d at 894. Accord, City of St. Paul v. Whidby, 295 Minn. 129, 203 N.W.2d 823 (1972); State v. Collins, 278 Minn. 437, 154 N.W.2d 688 (1967); State v. Illingworth, 278 Minn. 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. 1993).

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.W.2d 504, 506 (Minn. 1987) ("[A] trial court may not accept a guilty plea to a felony or gross misdemeanor charge made by an unrepresented defendant if the defendant has not consulted with counsel about waiving counsel and pleading guilty."); *Jones*, 266 N.W.2d 706 (standby counsel available to and did consult with defendant throughout proceedings and participated occasionally on defendant's behalf); *Burt*, 256 N.W.2d at 635

("One way for a trial court to help ensure that a defendant's waiver of counsel is knowing and intelligent would be to provide a lawyer to consult with the defendant concerning his proposed waiver").

In *State v. Rubin*, the court described the type of "penetrating and comprehensive examination" that must precede a "knowing and intelligent" waiver and strongly recommended the appointment of counsel "to advise and consult with the defendant as to the waiver." See also ABA Standards of Criminal Justice, *Providing Defense Services*, sections 5-7.3 (1980); Minn.R.Crim.P. 5.02. Minn.R.Juv.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 F.3d 151 (D.C.Cir.1994) (use of prior juvenile convictions to enhance adult sentence). The court shall make findings and conclusions on the record as to why it accepts the child's waiver or appoints standby counsel to assist a juvenile who purports to waive counsel.

Even though a child initially may waive counsel, the child continues to have the right to counsel at all further stages of the proceeding. Minn.R.Juv.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.W.2d 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 outside of the home, whether or not the placement is in a secure facility. Thus, a child's liberty is restricted when placed in a foster care (Minnesota Statutes, section 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 commitment to prison offenses are enumerated under Section V, Offense Severity Reference Table of the Minnesota Sentencing Guidelines. In addition, an inference the child poses a danger to others applies when the child uses a firearm in the commission of a felony pursuant to Minnesota Statutes, section 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," 62 Minn. L. Rev. 141, 209-16 (1984). Unlike the formalistic limitations imposed by *Kirby v. Illinois*, 406 U.S. 682 (1972), the rule recognizes that the dangers of unreliability, suggestibility, and error are inherent in all identification procedures. The rule attempts to balance the protection of a child from prejudicial misidentification with the State's interest in prompt investigation. A child who is in custody is entitled to have counsel present at a 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 incapacitated, the victim's family must receive notice. If the victim is a minor, the victim's parent or guardian must receive notice. Minnesota Statutes, section 629.725 (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 prosecuted, or that may be offered in rebuttal of character witnesses for the child or as a part of the occurrence or episode out of which the charges against the child arose. Notice of additional offenses shall be given at or before the pretrial or Omnibus hearing or as soon after those hearings as the offenses become known to the prosecutor. If there is no pretrial or Omnibus hearing, the notice shall be given at least seven (7) days before the trial.

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, document, record, recording or other material not privileged, be produced at the same time and place. The order shall direct the child to be present when the deposition is being taken.

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

(B) *Oath and Record.* The witness shall be put 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.W.2d 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 J.P.L., 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 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. Friert, 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 provided 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, 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. Disposition 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-exam 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.W.2d 751, 753 (Minn. Ct. App. 1991) pet. for rev. denied (Minn. Mar. 15, 1991); In re the Welfare of J.D.K., 449 N.W.2d 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-exam 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-exam 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 affect 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.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. 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 portions of an extended jurisdiction juvenile proceedings hearing to consider psychological material or other evidence that would not be accessible to the public in an adult proceeding.

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

(C) *Order of Hearing.*

(1) The prosecuting attorney may make an opening statement, confining the statement to the facts expected to be proved.

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

(3) The prosecuting attorney shall offer evidence in support of extended jurisdiction juvenile prosecution.

(4) The child's counsel may offer evidence on behalf of the child.

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

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

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

(D) *Burdens of Proof.* The prosecuting attorney shall prove by clear and convincing evidence that the case meets the criteria for extended jurisdiction juvenile prosecution, pursuant to 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, subs. 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, subds. 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 timing 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 fact finder must make a determination based only on the evidence in the record in order to ensure effective appellate review. See, e.g., Patterson v. Colorado, 205 U.S. 454 (1907).

The appearance, if not the actuality, of neutral and unbiased fact-finding may be compromised if the judge has actual knowledge of the social history or prior court history of the child. See, e.g., In re Gladys R., 1 Cal.3d 855, 464 P.2d 127, 83 Cal. Rptr. 671 (1970) (reversible error for juvenile court to review social study report before jurisdictional hearing). The problem is especially acute in delinquency proceedings because juveniles, with the exception of extended jurisdiction juveniles, do not have the right to a jury trial. McKeiver v. Pennsylvania, 403 U.S. 528, 91 S.Ct. 1976, 29 L.Ed. 647 (1970). Whenever a judge knows information that is not admissible at trial but is prejudicial to a child, the impartiality of the tribunal is open to question. A.B.A. Juvenile Justice Standards Relating to Adjudication, Standard 4.1 at 54. The problem of impartiality is particularly troublesome in juvenile court proceedings because the same judge typically handles the same case at different stages. For example, at a detention hearing, a judge may be exposed to a youth's social history file and prior record of police contacts and delinquency adjudications, all of which bear on the issue of appropriate pretrial placement. When the same judge is subsequently called upon to determine the admissibility of evidence in a suppression hearing and the guilt of the juvenile in the same proceeding, the juvenile's basic right to a fair trial by an impartial tribunal with a determination of guilt based on admissible evidence may be compromised. E.g., In re 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 informed that the matter is to be heard by a referee or the right to object is waived. The court may permit the filing of a written objection at any time. After the filing of an objection, a judge shall hear any motion and preside at any hearing.

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 litem;
- (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 MARCH 1, 2000

A. SCOPE AND PURPOSE

RULE 37. SCOPE AND PURPOSE

Rule 37.01 Scope

These rules govern the procedure for juvenile protection matters in the juvenile courts in Minnesota. Juvenile protection matters include all matters defined in Rule 38.01(h).

Rule 37.02 Purpose

These rules establish uniform practice and procedure for juvenile protection matters in the juvenile courts of Minnesota. The purpose of these rules is to:

- (a) secure for each child under the jurisdiction of the court a home that is safe and permanent;
- (b) secure for each child under the jurisdiction of the court the care and guidance, preferably in the child's own home, that will best serve the physical, emotional, spiritual, and mental welfare of the child;
- (c) provide judicial procedures which protect and promote the safety and welfare of the child;
- (d) whenever possible and in the best interests of the child, preserve and strengthen the child's family ties, removing the child from the custody of the child's parent or legal custodian only when the child's safety and welfare cannot otherwise be adequately safeguarded;
- (e) secure for the child such custody, care, and discipline, as nearly as possible equivalent to that which should have been given by the child's parent or legal custodian, when removal from the child's parent or legal custodian is necessary and in the child's best interests;
- (f) provide a just, thorough, speedy, and efficient determination of each juvenile protection matter before the court and ensure due process for all persons involved in the proceedings;
- (g) establish a uniform system for judicial oversight of case planning and reasonable efforts, or active efforts in the case of an Indian child, aimed at preventing or eliminating the need for removal of the child from the care of the child's parent or legal custodian;
- (h) ensure a coordinated decision-making process;
- (i) reduce unnecessary delays in court proceedings; and
- (j) encourage the involvement of parents and children in the proceedings.

Advisory Committee Comment

The purpose statement is not intended to be a rule of construction. Rather, it is intended as a guide for judges, attorneys, social services personnel, families, and other judicial system stakeholders to articulate that the overall objective of juvenile court is to move expeditiously toward a resolution of the matter in such a way as to secure that which is in the best interests of the child while ensuring due process for all of the parties.

The purpose statement reflects the policy set forth in the federal Adoption and Safe Families Act of 1997, P.L. 105-89 (Nov. 19, 1997), which emphasizes that the overriding objective in any juvenile protection matter is to timely provide a safe, permanent home for the child. The purpose statement also reflects the policy set forth in Minnesota Statutes, section 260C.001, subdivision 2, which provides, in pertinent part, as follows:

The paramount consideration in all proceedings concerning a child alleged or found to be in need of protection or services is the health, safety, and best interests of the child. ... The purpose of the laws relating to juvenile courts is to secure for each child alleged or adjudicated in need of protection or services and under the

jurisdiction of the court, the care and guidance, preferably in the child's own home, as will best serve the spiritual, emotional, mental, and physical welfare of the child; to provide judicial procedures which protect the welfare of the child; to preserve and strengthen the child's family ties whenever possible and in the child's best interests, removing the child from the custody of parents only when the child's welfare or safety cannot be adequately safeguarded without removal; and, when removal from the child's own family is necessary and in the child's best interests, to secure for the child custody, care and discipline as nearly as possible equivalent to that which should have been given by the parents.

Rule 37.02(h) calls for coordinated decision-making in those cases where one family is involved in simultaneous juvenile, criminal, and family court matters. The parties and the court should coordinate the separate proceedings to assure a consistent outcome that is in the best interests of the child.

RULE 38. DEFINITIONS

Rule 38.01 Definitions

The terms used in these rules shall have the following meanings:

(a) **"Child placing agency"** means any agency licensed pursuant to Minnesota Statutes, sections 245A.02 to 245A.16 or 252.28, subdivision 2.

(b) **"Emergency protective care"** means the placement status of a child when:

(1) taken into custody by a peace officer pursuant to Minnesota Statutes, section 260C.151, subdivision 6; 260C.154; or 260C.175;

(2) ordered into placement by the court pursuant to Minnesota Statutes, section 260C.178 or 260B.198, before a disposition; or

(3) returned home before a disposition with court ordered conditions of release.

(c) **"Foster care"** as defined in Minnesota Statutes, section 260C.007, subdivision 9, means the 24-hour-a-day care of a child in any facility which for gain or otherwise regularly provides one or more children, when unaccompanied by their parents, with a substitute for the care, food, lodging, training, education, supervision, or treatment they need but which for any reason cannot be furnished by their parent or legal custodian in their homes.

(d) **"Indian child"** as defined in the Indian Child Welfare Act, 25 U.S.C. section 1903(1)(4), and Minnesota Statutes, section 260.755, subdivision 8, means any unmarried person who is under age eighteen (18) and is either (1) a member of an Indian tribe or (2) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(e) **"Indian custodian"** as defined in the Indian Child Welfare Act, 25 U.S.C. section 1903(1)(6), and Minnesota Statutes, section 260.755, subdivision 10, means any Indian person who has legal custody of an Indian child pursuant to tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child.

(f) **"Indian tribe"** as defined in the Indian Child Welfare Act, 25 U.S.C. section 1903(1)(8), and Minnesota Statutes, section 260.755, subdivision 12, means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. section 1602(c), and exercising tribal governmental powers.

(g) **"Juvenile protection case records"** means all records of the juvenile court regarding a particular case or controversy, including all records filed with the court, all records maintained by the court, and all reporter's notes and tapes, electronic recordings, and transcripts of hearings and trials. See also "records" defined in subdivision (p).

(h) **“Juvenile protection matter”** means any of the following types of matters:

(1) child in need of protection or services matters as defined in Minnesota Statutes, section 260C.007, subdivision 4, including habitual truant and runaway matters;

(2) neglected and in foster care matters as defined in Minnesota Statutes, section 260C.007, subdivision 18;

(3) review of foster care matters and review of out-of-home placement matters as defined in Minnesota Statutes, sections 257.071 and 260C.141, subdivision 2;

(4) termination of parental rights matters as defined in Minnesota Statutes, sections 260C.301 to 260C.328; and

(5) permanent placement matters as defined in Minnesota Statutes, section 260C.201, subdivision 11, including transfer of permanent legal and physical custody to a relative matters and long-term foster care matters.

(i) **“Legal custodian”** means a person, including a guardian, who by court order or statute has sole or joint legal or physical custody of the child.

(j) **“Legal guardian”** means a person who is the court-appointed legal guardian of the child pursuant to Minnesota Statutes, section 260C.325, or Minnesota Statutes, Chapter 525, or an equivalent law in another jurisdiction.

(k) **“Parent”** as adapted from Minnesota Statutes, section 260C.007, subdivision 12, means the birth, legally adjudicated, or adoptive parent of a minor child. For an Indian child, parent also includes any Indian person who has legally adopted an Indian child including a person who has adopted a child by tribal law or custom as provided in Minnesota Statutes, section 260.755, subdivision 14, but it does not include an unmarried father whose paternity has not been acknowledged or established.

(l) **“Person”** as defined in Minnesota Statutes, section 260C.007, subdivision 13, means any individual, association, corporation, partnership, and the state or any of its political subdivisions, departments, or agencies.

(m) **“Protective care”** means the right of the local social services agency or child-placing agency to temporary physical custody and control of a child for purposes of foster care placement, and the right and duty of the local social services agency or child-placing agency to provide the care, food, lodging, training, education, supervision, and treatment the child needs.

(n) **“Protective supervision”** as referenced in Minnesota Statutes, section 260C.201, subdivision 1(a)(1), means the right and duty of the local social services agency or child-placing agency to monitor the conditions imposed by the court directed to the correction of the child's need for protection or services while in the care of the child's parent or legal custodian.

(o) **“Reasonable efforts”** as defined in Minnesota Statutes, section 260.012(b), means the exercise of due diligence by the responsible social services agency to use appropriate and available services to meet the needs of the child and the child's family to prevent removal of the child from the child's parent or legal custodian or, upon removal, services to eliminate the need for removal and reunite the family. Reasonable efforts includes efforts by the local social services agency to secure for the child a legally permanent home in a timely fashion when reunification efforts are no longer applicable.

(p) **“Records”** means any recorded information that is collected, created, received, maintained, or disseminated by a court or court administrator, regardless of its physical form or method of storage, and specifically excludes judicial work product and drafts as defined in the Rules of Public Access to the Records of the Judicial Branch. See also “juvenile protection case records” defined in subdivision (g).

(q) **“Relative”** as adapted from Minnesota Statutes, section 260C.007, subdivision 14, and section 260C.193, subdivision 3(c), means a parent, stepparent, grandparent, brother, sister, uncle or aunt of the minor, or an important friend with whom the child has resided or had significant contact. This relationship may be by blood, marriage, or

adoption. For an Indian child, relative includes members of the extended family as defined by the law or custom of the Indian child's tribe or, in the absence of laws or custom, a person who has reached the age of 18 and who is the child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first or second cousin, or stepparent, as provided in the Indian Child Welfare Act, 25 U.S.C. section 1903(2).

(r) **"Removed from Home"** means the child has been taken out of the care of the parent or legal custodian, including a substitute caregiver, and placed in foster care or in a shelter care facility.

(s) **"Shelter care facility"** as adapted from Minnesota Statutes, section 260C.007, subdivision 17, means a physically unrestricting facility, including but not limited to, a hospital, a group home, or a facility licensed for foster care pursuant to Minnesota Statutes, Chapter 245A, used for the temporary care of a child during the pendency of a juvenile protection matter.

RULE 39. APPLICABILITY OF OTHER RULES AND STATUTES

Rule 39.01 Rules of Civil Procedure

Except as otherwise provided by statute or these rules, the Minnesota Rules of Civil Procedure do not apply to juvenile protection matters.

Advisory Committee Comment

With respect to transfer of permanent legal and physical custody, Minnesota Statutes, section 260C.201, subdivision 11(e)(1), provides in pertinent part that "the juvenile court shall follow the standards and procedures applicable under [chapter 257, chapter 260], or chapter 518." The statute also provides that an order transferring permanent legal and physical custody to a relative must also be filed in the family court. Pursuant to Rule 301 of the Rules of General Practice for the District Court, the Rules of Civil Procedure apply in transfer of permanent legal and physical custody matters and in adoption matters.

Rule 39.02 Rules of Evidence

Subdivision 1. Generally. Except as otherwise provided by statute or these rules, in a juvenile protection matter the court shall only admit evidence that would be admissible in a civil trial pursuant to the Minnesota Rules of Evidence.

Subd. 2. Certain Out-of-Court Statements Admissible. An out-of-court statement not otherwise admissible by statute or rule of evidence is admissible as evidence in a juvenile protection matter if:

(a) the statement was made by a child under ten (10) years of age or by a child ten (10) years of age or older who is mentally impaired as defined in Minnesota Statutes, section 609.341, subdivision 6;

(b) the statement alleges, explains, denies, or describes:

- (1) any act of sexual penetration or contact performed with or on the child;
- (2) any act of sexual penetration or contact with or on another child observed by the child making the statement;
- (3) any act of physical abuse or neglect of the child by another; or
- (4) any act of physical abuse or neglect of another child observed by the child making the statement;

(c) the court finds that the time, content, and circumstances of the statement and the reliability of the person to whom the statement is made provide sufficient indicia of reliability; and

(d) the proponent of the statement notifies all other parties of the particulars of the statement and the intent to offer the statement sufficiently in advance of the

proceeding at which the proponent intends to offer the statement into evidence to provide the parties with a fair opportunity to respond to the statement.

For purposes of this subdivision, an out-of-court statement includes a video, audio, or other recorded statement.

Subd. 3. Judicial Notice. The court, upon its own motion or the motion of any party or the county attorney, may take judicial notice of any finding of fact or court order in any other proceeding in any other court involving the child or the child's parent or legal custodian.

Rule 39.03 Indian Child Welfare Act

Juvenile protection matters concerning an Indian child shall be governed by the Indian Child Welfare Act, 25 U.S.C. sections 1901 to 1963; the Minnesota Indian Family Preservation Act, Minnesota Statutes, sections 260.751 to 260.835; and by these rules when these rules are not inconsistent with the Indian Child Welfare Act or the Minnesota Indian Family Preservation Act.

Rule 39.04 Rules of Guardian Ad Litem Procedure

The Rules of Guardian Ad Litem Procedure apply to juvenile protection matters.

39.05 Court Interpreter Statutes and Rules

The statutes and court rules regarding appointment of court interpreters apply to juvenile protection matters. The court may appoint an interpreter of its own selection and may fix reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and in the discretion of the court may be taxed ultimately as a cost.

B. GENERAL OPERATING RULES

RULE 40. TIME; TIMELINE

Rule 40.01 Computation of Time

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 in the computation of time. The last day of the period shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. When a period of time prescribed or allowed is three (3) 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 (Presidents' Day), Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, the day after Thanksgiving Day, Christmas Day, and any other day designated as a holiday by the President, Congress of the United States, or by the State.

Rule 40.02 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. If service is made by any means other than mail and accomplished after 5:00 p.m. local time on the day of service, one (1) additional day shall be added to the prescribed period.

Rule 40.03 Timeline

Subdivision 1. Child in Need of Protection or Services Matters.

(a) **Emergency Protective Care Hearing.** If a child has been removed from the home of the parent or legal custodian, the court shall hold an emergency protective care hearing with seventy-two (72) hours of the child's removal.

(b) **Admit/Deny Hearing.** When the child is removed from home by court order, an admit/deny hearing shall be held within ten (10) days of the date of the emergency protective care hearing. When the child is not removed from home by court order, an admit/deny hearing shall be held no sooner than five (5) days, and no later than twenty (20) days after the parties have been served with the petition. In the case of an Indian child, no foster care placement proceeding or termination of parental rights proceeding shall be held until at least ten (10) days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary of the Interior, provided, however, that the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty (20) additional days to prepare for such proceeding.

(c) **Pretrial Conference.** A pretrial conference may be held any time after the admit/deny hearing, but not later than ten (10) days before the date the trial is scheduled to commence.

(d) **Trial.** When the statutory grounds set forth in the petition are denied, a trial shall be commenced within sixty (60) days of the emergency protective care hearing or the admit/deny hearing, whichever is earlier.

(e) **Findings/Adjudication.** The court shall issue its findings and order concerning adjudication within fifteen (15) days of the date that the trial is completed. If written argument is to be submitted, such argument must be submitted within fifteen (15) days of the conclusion of testimony. The trial is not considered completed until written arguments, if any, are submitted.

(f) **Disposition.** Whenever practicable, the court may order disposition at the same time as the adjudication. In the event disposition is not ordered at the same time as the adjudication, the court shall include in the adjudication order a date for a disposition hearing which shall take place no later than ten (10) days from the date the court issues its adjudication order.

(g) **Review of Legal Custody.** When the disposition is an award of legal custody to the local social services agency, the court shall review the disposition in court at least every ninety (90) days. Any party or the county attorney may request a review hearing before ninety (90) days.

(h) **Review of Protective Supervision.** When the disposition is protective supervision, the court shall review the disposition in court at least every six (6) months from the date of the disposition.

Subd. 2. Permanent Placement Matters. When the child is in protective care, or legal or physical custody is transferred to the local social services agency, the court shall conduct a hearing to determine the permanent placement status of the child:

(a) within six (6) months of the date the child is removed from the home of the parent or legal custodian if the child is under eight (8) years of age at the time the petition is filed; or

(b) within twelve (12) months of the date the child is removed from the home of the parent or legal custodian if the child is eight (8) years of age or older at the time the petition is filed.

Subd. 3. Termination of Parental Rights Matters.

(a) **Admit/Deny Hearing.** An admit/deny hearing shall be held not less than ten (10) days after service of the petition.

(b) **Pretrial Conference.** A pretrial conference may be held any time after the date of the admit/deny hearing, but not later than ten (10) days before the date the trial is scheduled to commence.

(c) **Trial.** A trial shall be commenced within ninety (90) days of entry of the denial of the statutory grounds set forth in the petition.

(d) **Findings/Adjudication.** The court shall issue its findings and order concerning adjudication within fifteen (15) days of the date that the trial is completed. If written argument is to be submitted, such argument must be submitted within fifteen (15) days

of the conclusion of testimony. The trial is not considered completed until written arguments, if any, are submitted.

(e) **Review.** When the court orders termination of parental rights and adoption as the permanency plan, the court shall conduct a hearing to review progress toward adoptive placement at least every ninety (90) days.

Advisory Committee Comment

The timeline set forth in Rule 40.03 is intended as an overall guide for juvenile protection matters and is based upon the requirements of Minnesota Statutes, sections 260C.176; 260C.211, subdivisions 10 and 11; 260C.178, subdivision 6; the Indian Child Welfare Act, 25 U.S.C. sections 1901 to 1963; and the Adoption and Safe Families Act of 1997, P.L. 105-89. Specific time requirements are set forth in each individual rule.

Rule 40.03, subdivision 1, sets forth the timeline for child in need of protection or services matters. The following timeline is an example of how a case would proceed if it related to a non-Indian child over eight years of age who has been removed from the child's home:

<i>Day</i>	<i>Event</i>
<i>1</i>	<i>Child removed from home</i>
<i>3</i>	<i>Emergency Protective Care Hearing</i>
<i>3-13</i>	<i>Admit/Deny Hearing</i>
<i>14-53</i>	<i>Pretrial Conference</i>
<i>63</i>	<i>Trial</i>
<i>79</i>	<i>Findings/Adjudication</i>
<i>79-88</i>	<i>Disposition Hearing</i>
<i>168-178</i>	<i>Review Hearing</i>
<i>258-268</i>	<i>Review Hearing</i>
<i>348-358</i>	<i>Review Hearing</i>
<i>365</i>	<i>Permanent Placement Determination Hearing</i>

Rule 40.03, subdivision 2, complies with Minnesota Statutes, section 260C.201, subdivision 11, and provides that a permanent placement determination hearing must be held within six (6) months of a child's removal from the home if the child is under eight (8) years of age at the time the petition is filed.

Rule 40.04 Sanctions for Violation

The court may impose sanctions upon any county attorney, party, or counsel for a party who willfully fails to follow the timelines set forth in these rules.

Rule 40.05 Application of Timing Provisions

The timing provisions set forth in this rule are subject to the continuance provisions of Rule 41 and any other timing provisions set forth in each specific rule.

RULE 41. CONTINUANCES

41.01 Findings

Subdivision 1. Generally. Upon its own motion or motion of a party or the county attorney the court may continue a scheduled hearing or trial to a later date so long as the timelines for achieving permanency as set forth in these rules are not delayed. To grant a continuance, the court must make written findings or oral findings on the record that the continuance is necessary for the protection of the child, for accumulation or presentation of evidence or witnesses, to protect the rights of a party, or for other good cause shown.

Subd. 2. Trials. Trials may not be continued or adjourned for more than one (1) week unless the court makes specific findings that the continuance or adjournment is in the best interests of the child.

Advisory Committee Comment

Although the court may grant a continuance, in appropriate circumstances, the court should not grant a continuance that would defeat the federal and state statutory time requirements for permanency determinations.

Rule 41.02 Notice of Continuance

The court shall, either in writing or orally on the record, provide notice to the parties and the county attorney of the date and time of the continued hearing or trial.

Rule 41.03 Existing Orders; Interim Orders

Unless otherwise ordered, existing orders shall remain in full force and effect during a continuance. When a continuance is ordered, the court may make any interim orders it deems to be in the best interests of the child in accordance with the provisions of Minnesota Statutes, sections 260C.001 to 260C.451.

RULE 42. SCHEDULING ORDER

Rule 42.01 Purpose

The purpose of this rule is to provide a uniform system for scheduling matters for trial and disposition and for achieving permanency within the timelines set forth in these rules.

Rule 42.02 Order

Subdivision 1. When Issued. The court shall issue a scheduling order at the admit/deny hearing held pursuant to Rule 71 or within five (5) days of the admit/deny hearing.

Subd. 2. Contents of Order. The scheduling order shall establish a deadline or specific date for:

- (a) completion of discovery and other pretrial preparation;
- (b) serving, filing, or hearing motions;
- (c) submission of the proposed case plan;
- (d) the pretrial conference;
- (e) the trial;
- (f) the disposition hearing;
- (g) the permanency placement determination hearing; and
- (h) any other events deemed necessary or appropriate.

Advisory Committee Comment

Rule 42.02 does not require the court to actually calendar time for any of the events described in the order. Rather, the court may simply set deadlines without establishing a date certain. For example, without setting a specific date the court may order that discovery must be completed at least ten days prior to trial.

Rule 42.03 Amendment

The court may amend a scheduling order as necessary, so long as the permanency timelines set forth in these rules are not delayed.

RULE 43. REFEREES AND JUDGES

Rule 43.01 Referee Authorization to Hear Matter

A referee may, as authorized by the chief judge of the judicial district, hear any juvenile protection matter under the jurisdiction of the juvenile court.

Rule 43.02 Objection to Referee Presiding Over Matter

A party or the county attorney may object to having a referee preside over a matter. The right to object shall be deemed waived unless the objection is in writing, filed with the court, and served upon all other parties and the county attorney within three (3) days after being informed that the matter is to be heard by a referee. Upon the filing of an objection, a judge shall hear any motion and shall preside at all further motions and proceedings involving the matter.

Rule 43.03 Removal of Particular Referee

Subdivision 1. Notice to Remove. A party or the county attorney may file with the court and serve upon all other parties a notice to remove a particular referee. The notice shall be served and filed within ten (10) days of the date the party or county attorney receives notice of the name of the referee who will preside at the hearing or trial, but not later than the commencement of the hearing or trial. A notice to remove may not be filed by a party or the county attorney against a referee who has presided at a motion or at any other proceeding in the matter of which the party or the county attorney had notice. A referee who has presided at a motion or other proceeding may not be removed except upon an affirmative showing of prejudice on the part of the referee. A judge shall rule on a motion to remove a referee who has already presided over the proceeding.

Subd. 2. Prejudice. If a party or the county attorney has once disqualified a referee as a matter of right, that party or the county attorney may disqualify the substitute referee, but only upon an affirmative showing of prejudice. A showing that the referee might be excluded for bias from acting as a juror in the matter constitutes an affirmative showing of prejudice. A judge shall rule on a motion to remove a substitute referee.

Subd. 3. Assignment of Another Referee. Upon the filing of a notice to remove a particular referee, or if a party or the county attorney makes an affirmative showing of prejudice against a substitute referee, the chief judge of the judicial district shall assign another juvenile court referee or a judge to hear the matter.

Subd. 4. Termination of Parental Rights Matters and Permanent Placement Matters. When a termination of parental rights matter or a permanent placement matter is filed in connection with a child who is the subject of a pending child in need of protection or services matter, the termination or permanency matter shall be considered a continuation of the protection matter. If the referee assigned to the protection matter is assigned to hear the termination or permanency matter, the parties and the county attorney shall not have the right to disqualify the assigned referee as a matter of right.

Advisory Committee Comment

A party may not remove a particular referee and then object to having the case heard by any referee. If a judge is assigned to hear a matter after a party has objected to a particular referee hearing the matter, the party may not seek removal of the judge as a matter of right but may only seek removal of a subsequent judge for cause.

Rule 43.04 Transmittal of Referee's Findings and Recommended Order

Subdivision 1. Transmittal. Upon the conclusion of a hearing, the referee shall transmit to a judge the written findings and recommended order. Notice of the findings

and recommended order, along with notice of the right to review by a judge, shall be given either orally on the record or in writing to all parties, the county attorney, and to any other person as directed by the court.

Subd. 2. Effective Date. The recommended order is effective upon signing by the referee, unless stayed, reversed, or modified by a judge upon review.

Rule 43.05 Review of Referee's Findings and Recommended Order

Subdivision 1. Right to Review. A matter that has been decided by a referee may be reviewed in whole or in part by a judge. Review, if any is requested, shall be from the referee's written findings and recommended order. Upon request for review, the recommended order shall remain in effect unless stayed by a judge.

Subd. 2. Motion for Review. Any motion for review of the referee's findings and recommended order, together with a memorandum of law, shall be filed with the court and served on all parties and the county attorney within five (5) days of the filing of the referee's findings and recommended order. Upon the filing of a motion for review, the court administrator shall notify each party and the county attorney of the name of the judge to whom the review has been assigned.

Subd. 3. Response to Motion for Review. The parties and the county attorney shall file and serve any responsive motion and memorandum within three (3) days from the date of service of the motion for review.

Subd. 4. Timing. Failure to timely file and serve a submission may result in dismissal of the motion for review or disallowance of the submissions.

Subd. 5. Basis of Review. The review shall be based on the record before the referee and no additional evidence may be filed or considered. No personal appearances will be permitted, except upon order of the court for good cause shown.

Subd. 6. Transcripts. Any party or county attorney desiring to submit a transcript of the hearing held before the referee shall make arrangements with the court reporter at the earliest possible time. The court reporter shall advise the parties and the court of the day by which the transcript will be filed.

Advisory Committee Comment

If a party or the county attorney cannot obtain the transcript in time to file it with the motion for review, the motion should set forth the date the transcript will be submitted. The motion, recommended order, and memorandum of law must still be filed within the five day time period prescribed by the rule, but the decision of the court may be delayed until the court has the opportunity to review the transcript.

Rule 43.06 Order of the Court

When no review is requested, or when the right to review is waived, the findings and recommended order of the referee become the order of the court when confirmed by the judge as written or when modified by the judge sua sponte. The order shall be confirmed or modified by the court within ten (10) days of the transmittal of the findings and proposed order.

Rule 43.07 Removal of Judge

Subdivision 1. Disability of Judge. If by reason of death, sickness, or other disability a judge before whom a proceeding in the matter has been tried is unable to perform judicial duties after a decision is made or findings of fact and conclusions of law are filed, any other judge regularly sitting in or assigned to the court in which the action was tried may perform those duties; but if such other judge is satisfied that the duties cannot be performed because that judge did not preside at the trial, or for any other reason, that judge may exercise discretion to grant a new trial.

Subd. 2. Interest or Bias. No judge shall preside over any case if that judge is interested in its determination or if that judge might be excluded for bias from acting as

a juror in the matter. If there is no other judge of the district who is qualified, or if there is only one (1) judge of the district, such judge shall immediately notify the chief justice of the supreme court of that judge's disqualification.

Subd. 3. Motion to Remove.

(a) **Procedure.** A party or the county attorney may file with the court and serve upon all other parties a motion to remove. The motion shall be served and filed within ten (10) days of the date the party receives notice of the name of the judge who is to preside at the hearing or trial, but not later than the commencement of the hearing or trial.

(b) **Presiding Judge.** A motion to remove shall not be filed against a judge who has presided at a motion or any other proceeding in the matter of which the party or the county attorney had notice. A judge who has presided at a motion or other proceeding may not be removed except upon an affirmative showing of prejudice on the part of the judge.

(c) **Showing of Prejudice.** After a party or the county attorney has once disqualified a presiding judge as a matter of right pursuant to Minnesota Statutes, section 542.16, that party may disqualify the substitute judge, but only by making an affirmative showing of prejudice. A showing that the judge might be excluded for bias from acting as a juror in the matter constitutes an affirmative showing of prejudice. Upon the filing of a motion to remove, or if a litigant makes an affirmative showing of prejudice against a substitute judge, the chief judge of the judicial district shall assign any other judge of any court within the district to hear the matter.

Subd. 4. Termination of Parental Rights Matters and Permanent Placement Matters. When a termination of parental rights matter or a permanent placement matter is filed in connection with a child who is the subject of a pending child in need of protection or services matter, the termination or permanency matter shall be considered a continuation of the protection matter. If the judge assigned to the protection matter is assigned to hear the termination or permanency matter, the parties and the county attorney shall not have the right to disqualify the assigned judge as a matter of right.

RULE 44. ACCESSIBILITY OF JUVENILE PROTECTION CASE RECORDS

Rule 44.01 Availability of Juvenile Protection Case Records

Juvenile protection case records shall be available for disclosure, inspection, copying, and release as required by statute or these rules.

Advisory Committee Comment

"Juvenile protection case records" is defined at Rule 38.01(g) and specifically excludes judicial work product and drafts.

On June 22, 1998, the Minnesota Supreme Court began a three-year, twelve-county Open Hearings Pilot Project under which juvenile protection hearings are presumed open to the public, the court may close or partially close a hearing only in exceptional circumstances, and juvenile protection case records, with limited exceptions, are presumed accessible to the public. Amended Order Establishing Pilot Project on Open Hearings in Juvenile Protection Matters, File No. C2-95-1476 (Minn. S. Ct., filed Feb. 6, 1998), and Order Promulgating Rule on Public Access to Records Relating to Open Juvenile Protection Proceedings, File No. C2-95-1476 (Minn. S. Ct., filed May 29, 1998). The following twelve counties are participating in the pilot project: Chisago, Clay, Goodhue, Houston, Hennepin, LeSueur, Marshall, Pennington, Red Lake, St. Louis (Virginia court only), Stevens, and Watonwan. The pilot project is scheduled to continue until June 21, 2001. A copy of the pilot project rules regarding open juvenile court hearings and accessibility of records is available from the court administrator of each county participating in the pilot project. Rule 44 applies in counties that are not part of the Open Hearings Pilot Project.

Rule 44.02 No Order Required

Subdivision 1. Generally. Unless the court issues a protective order regarding a record or a portion of a record, juvenile protection case records shall be available for disclosure, inspection, copying, and release to the following without a court order:

- (a) the court and court personnel;
- (b) any party;
- (c) counsel for any party or the child; and
- (d) the county attorney.

Subd. 2. Parent's Rights Terminated. If a parent's rights to a child have been terminated, that parent shall not have access to records of further proceedings involving the child.

Subd. 3. Other Agencies. The court shall forward data to agencies and others as required by statute.

Subd. 4. Counsel Sharing Record with Client. Unless the court issues a protective order pursuant to Rule 44.05, counsel for a party may only share juvenile protection case records with that party consistent with state and federal access rules.

Advisory Committee Comment

Minnesota Statutes, section 260C.171, subdivision 1, mandates that "[u]nless otherwise provided by law, all court records shall be open at all reasonable times to the inspection of any child to whom the records relate, and to the child's parent or guardian." Rule 44.02 reflects the statutory language and provides that parties may have direct access to juvenile protection case records. The court may at any time issue a protective order regarding specific juvenile protection case records. If a party believes that certain documents are particularly sensitive, the party may ask the court to issue a protective order.

A parent whose rights to a child have been terminated is not a party to subsequent proceedings in juvenile court and does not have the right to access post-termination records.

44.03 Court Order Required

Subdivision 1. Person(s) with Custody or Supervision of the Child, and Others. The court may order juvenile protection case records, or portions of juvenile protection case records, to be made available for inspection, copying, disclosure, or release subject to such conditions as the court may direct, to:

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

Subd. 2. Public. A court order is required before any inspection, copying, disclosure, or release of a juvenile protection case record, or any portion of a juvenile protection case record, to the public. Before any court order is made, the court must find that inspection, copying, disclosure, or release is:

- (a) in the best interests of the child;
- (b) in the interests of public safety; or
- (c) necessary for the functioning of the juvenile court system.

Rule 44.04 Disclosure to Employer and Military Prohibited

Juvenile protection case records shall not be inspected, copied, disclosed, or released to any present or prospective employer of the child or the military services.

Rule 44.05 Protective Order

Upon motion pursuant to Rule 51, and for good cause shown, the court may at any time issue a protective order regarding any record or portion of a record. The court may require an ex parte showing that inspection, disclosure, copying, or release of the record is necessary and in the best interests of the child, public safety, or the functioning of the juvenile court system. Pursuant to Minnesota Statutes, section 260C.171, subdivision 3, the court may issue a protective order prohibiting an attorney from sharing a record or portion of a record with a client other than a guardian ad litem.

Rule 44.06 Procedure for Requesting Access

The procedures for requesting access to case records are set forth in the Rules of Public Access to the Records of the Judicial Branch.

Advisory Committee Comment

Rule 44.06 refers to the Rules of Public Access to the Records of the Judicial Branch. Those rules set forth the procedures for requesting access to records and for determining fees when copies are requested.

RULE 45. EX PARTE COMMUNICATION**Rule 45.01 Ex Parte Communication Prohibited**

Ex parte communication is prohibited, except as to procedural matters not affecting the merits of the case. All communications between the court and a party or participant shall be in the presence of all other parties or in writing with copies to the parties or, if represented, the party's attorney, except as otherwise permitted by statute or these rules. The court shall not consider any ex parte communication from anyone concerning a proceeding, including conditions of release, evidence, adjudication, disposition, or any other matter.

Advisory Committee Comment

Rule 45.01 reflects the prohibition against ex parte communication set forth in Rule 3.5(g) of the Rules of Professional Conduct and Canon 3A(7) of the Code of Judicial Conduct.

Rule 45.02 Disclosure

The court shall fully disclose to all parties any attempted prohibited ex parte communication.

RULE 46. ORDERS**Rule 46.01 Written or Oral Orders**

Court orders may be written or stated on the record. An order stated on the record shall also be reduced to writing by the court. An order shall remain in full force and effect until the first occurrence of one of the following:

- (a) issuance of an inconsistent order;
- (b) the order ends pursuant to the terms of the order; or
- (c) jurisdiction of the juvenile court is terminated.

Rule 46.02 Immediate Effect of Oral Order

Unless otherwise ordered by the court, an order stated on the record shall be effective immediately.

Rule 46.03 Delivery; Mailing

Court orders shall be delivered at the hearing or mailed by the court administrator to each party, the county attorney, and such other persons as the court may direct. If a party is represented by counsel, delivery or service shall be upon counsel. Filing and mailing of the order by the court administrator must be accomplished within ten (10) days of the date the judicial officer delivers the order to the court administrator.

Rule 46.04 Notice of Filing of Order

Each order delivered or mailed to the parties and the county attorney shall be accompanied by a notice of filing which shall include notice of the right to appeal a final order pursuant to Rule 82. The State Court Administrator shall develop a "notice of filing" form which shall be used by court administrators.

RULE 47. RECORDING AND TRANSCRIPTS**Rule 47.01 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 shall be assigned by the court to operate the device. Any required transcripts shall be prepared by personnel assigned by the court.

Rule 47.02 Availability of Transcripts

Transcripts shall be available only to the county attorney, parties, and participants for further use in the hearing or subsequent hearings, appeal, habeas corpus actions, or for other use as the court deems proper. Any request for a transcript shall be made to the court in writing or on the record.

RULE 48. USE OF TELEPHONE AND INTERACTIVE VIDEO**Rule 48.01 Motions and Conferences**

The court may hear motions and conduct conferences with counsel by telephone or interactive video.

Advisory Committee Comment

Rule 48.01 authorizes the court to use telephone and interactive video to hear motions where testimony is not required and to resolve procedural matters with counsel for the parties.

Rule 48.02 Hearings and Taking Testimony

By agreement of the parties, or in exceptional circumstances upon motion of a party or the county attorney, the court may hold hearings and take testimony by telephone or interactive video.

Advisory Committee Comment

Rule 48.02 authorizes the court to hold hearings and take testimony by telephone or interactive video only upon agreement of the parties or in exceptional circumstances upon motion. The intent of this rule is to ensure that parties are permitted to fully participate in hearings and to be present when testimony is offered. The rule provides that the court has the opportunity, in all but the most exceptional cases, to personally observe witnesses in order to effectively weigh credibility. However, it also gives the court some flexibility in those exceptional cases.

Rule 48.03 In Court Appearance Not Precluded

This rule shall not preclude a party or the county attorney from being present in person before the court at a hearing.

RULE 49. SUBPOENAS**Rule 49.01 Subpoena for a Hearing or Trial**

At the request of any party or the county attorney, the court administrator shall issue a subpoena for a witness in a matter pending before the court.

Rule 49.02 Form; Issuance; Notice

Subdivision 1. Form. Every subpoena shall be issued by the court administrator under the seal of the court, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a specified time and place or to produce books, papers, documents, or other tangible things designated in the subpoena. The court administrator shall issue a subpoena, or a subpoena for the production of documentary evidence or tangible things, signed and sealed, but otherwise in blank, to a party or county attorney requesting it, who shall fill it in before service.

Subd. 2. Issuance. A subpoena shall be issued only for appearance at a hearing, a deposition pursuant to Rule 53, a trial pursuant to Rule 74, or to produce books, papers, documents, or other tangible things designated in the subpoena.

Subd. 3. Notice. Every subpoena shall contain a notice to the person to whom it is directed advising the person of the right to reimbursement for certain expenses pursuant to Rule 49.08.

Rule 49.03 Service

A subpoena may be served by the sheriff, a deputy sheriff, or any other person over the age of 18 who is not a party to the proceeding. Service of a subpoena upon a person named in the subpoena shall be made by delivering a copy of the subpoena to the named person or by leaving a copy at the person's usual place of abode with some person of suitable age and discretion residing at such abode.

Rule 49.04 Motion to Quash a Subpoena

Upon motion pursuant to Rule 51, a person served with a subpoena may move to quash or modify the subpoena. Upon hearing a motion to quash a subpoena, the court may:

- (a) direct compliance with the subpoena;
- (b) modify the subpoena if it is unreasonable or oppressive;
- (c) deny the motion to quash the subpoena on the condition that the person requesting the subpoena prepay the reasonable cost of producing the books, papers, documents, or tangible things; or
- (d) quash the subpoena.

Rule 49.05 Objection

The person to whom the subpoena is directed may, within five (5) days after service of the subpoena or on or before the time specified in the subpoena for compliance if such time is less than five (5) days after service, serve upon the party serving the subpoena a written objection to the taking of the deposition or the production, inspection, or copying of any or all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect or copy the materials, except pursuant to an order of the court from which the subpoena was issued. If objection is made, the party serving the subpoena may, at any time before or

during the taking of the deposition, and upon notice and motion to the deponent, request an order requiring compliance with the subpoena.

Rule 49.06 Production of Documentary Evidence

A subpoena may also command the person to whom it is directed to produce books, papers, documents, or tangible things designated in the subpoena.

Rule 49.07 Subpoena for Taking Depositions; Place of Examination

Subdivision 1. Proof of Service. Proof of service of notice to take a deposition, as provided in Rule 53, constitutes a sufficient authorization for the issuance of a subpoena for the person named or described in the subpoena.

Subd. 2. Location. A resident of the state may be required to attend an examination only in the county in which the resident resides or is employed or transacts business in person, or at such other convenient place as is fixed by order of the court. A nonresident of the state may be required to attend in any county of the state.

Rule 49.08 Expenses

Subdivision 1. Witnesses. If the subpoena is issued at the request of the State of Minnesota, a political subdivision of the State, or an officer or agency of the State, witness fees and mileage shall be paid by public funds. If the subpoena is issued at the request of a party who is unable to pay witness fees and mileage, these costs shall upon order of the court be paid in whole or in part at public expense, depending upon the ability of the party to pay. All other fees and mileage shall be paid by the requesting party, unless otherwise ordered by the court upon motion.

Subd. 2. Expenses of Experts. Subject to the provisions of Rule 53, a witness who is not a party to the action or an employee of a party and who is required to give testimony or produce documents relating to a profession, business, or trade, or relating to knowledge, information, or facts obtained as a result of activities in such profession, business, or trade, is entitled to reasonable compensation for the time and expense involved in preparing for and giving such testimony or producing such documents. The party serving the subpoena shall make arrangements for such reasonable compensation prior to the time of the taking of the testimony. If such arrangements are not made, the person subpoenaed may proceed pursuant to Rule 49.04 or Rule 49.05. If the deponent has moved to quash or otherwise objected to the subpoena, the party serving the subpoena may, upon notice and motion to the deponent and all parties and the county attorney, move for an order directing the amount of such compensation at any time before the taking of the deposition.

Rule 49.09 Failure to Appear

If any person personally served with a subpoena fails, without reasonable cause, to appear or bring the child if ordered to do so, or if the court has reason to believe the person is avoiding personal service, the court may sua sponte or upon the motion of a party or the county attorney pursuant to Rule 51 proceed against the person for civil contempt of court pursuant to Rule 50 or the court may issue a warrant for the person's arrest, or both. When it appears to the court that service will be ineffectual, or that the welfare of the child requires that the child be immediately brought into the custody of the court, the court may issue a warrant for immediate custody of the child.

RULE 50. CONTEMPT

Rule 50.01 Initiation

Contempt proceedings shall be initiated by personal service upon the alleged contemnor of an order to show cause together with a motion for contempt and an affidavit supporting the motion. The order to show cause shall direct the alleged contemnor to appear and show cause why he or she should not be held in contempt of

court and why the moving party should not be granted the relief requested in the motion. The order to show cause shall contain at least the following:

- (a) a reference to the specific order of the court alleged to have been violated and date of filing of the order;
- (b) a quotation of the specific applicable provisions ordered;
- (c) a statement identifying the alleged contemnor's ability to comply with the order; and
- (d) a statement identifying the alleged contemnor's failure to comply with the order.

Rule 50.02 Supporting and Responsive Affidavits

The supporting affidavit of the moving party shall set forth with particularity the facts constituting each alleged violation of the order. Any responsive affidavit shall set forth with particularity any defenses the alleged contemnor will present to the court. The supporting affidavit and the responsive affidavit shall contain paragraphs which shall be numbered to correspond to the paragraphs of the motion where possible.

Rule 50.03 Hearing

The alleged contemnor must appear in person before the court to be afforded the opportunity to oppose the motion for contempt by sworn testimony. The court shall not act upon affidavit alone, absent express waiver by the alleged contemnor of the right to offer sworn testimony.

Rule 50.04 Sentencing

Subdivision 1. Default of Conditions for Stay. Where the court has entered an order for contempt with a stay of sentence and there has been a default in the performance of the condition(s) for the stay, before a writ of attachment or bench warrant may be issued, an affidavit of non-compliance and request for writ of attachment must be served upon the defaulting party, unless the person is shown to be avoiding service.

Subd. 2. Writ of Attachment. The writ of attachment shall direct law enforcement officers to bring the defaulting party before the court for a hearing to show cause why the stay of sentence should not be revoked. The moving party shall submit a proposed order for writ of attachment to the court.

Subd. 3. Sanctions. Upon evidence taken, the court shall determine the guilt or innocence of the alleged contemnor. If the court determines that the alleged contemnor is guilty, the court shall order punishment by fine or imprisonment for not more than six (6) months, or both.

Subd. 4. Authority of Court. Nothing in these rules shall be interpreted to limit the inherent authority of the court to enforce its own orders.

RULE 51. MOTIONS

Rule 51.01 Form

Subdivision 1. Generally. An application to the court for an order shall be by motion.

Subd. 2. Motions to Be in Writing. Except as permitted by subdivision 3, a motion shall be in writing and shall:

- (a) set forth the relief or order sought;
- (b) state with particularity the grounds for the relief or order sought;
- (c) be signed by the person making the motion;
- (d) be filed with the court, unless it is made orally in court on the record; and

(e) be accompanied by a supporting affidavit or other supporting documentation or a memorandum of law, unless it is made orally in court on the record.

The requirement of writing is fulfilled if the motion is stated in a written notice of motion. The parties may agree to written submission to the court for decision without oral argument unless the court directs otherwise.

Subd. 3. Exception. Unless another party or the county attorney objects, a party or the county attorney may make an oral motion during a hearing. All oral motions and objections to oral motions shall be made on the record. When an objection is made, the court shall determine whether there is good cause to permit the oral motion and, before issuing an order, shall allow the objecting party reasonable time to respond.

Rule 51.02 Service and Notice of Motions

Subdivision 1. Upon Whom. The moving party shall serve the notice of motion and motion, along with any supporting affidavit or other supporting documentation or a memorandum of law, on all parties, the county attorney, and any other persons designated by the court. The moving party shall serve notice of the hearing on all participants, except a child under age 12 who is not represented by counsel.

Subd. 2. How Made. Service of a motion may be made by personal service, by mail, or by transmitting a copy by facsimile transmission pursuant to Rule 68.

Subd. 3. Time. Any written motion, along with any supporting affidavit or other supporting documentation or memorandum of law, 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. The filing and service of a motion shall not extend the permanency timelines set forth in these rules.

Rule 51.03 Ex Parte Motion and Hearing

Subdivision 1. Motion. A motion may be made ex parte when permitted by statute or these rules. Every ex parte motion shall be accompanied by an explanation of the efforts made to notify all parties and the county attorney of the motion or an explanation of why such notice would place the child in danger of imminent harm or could result in the child being hidden or removed from the court's jurisdiction.

Subd. 2. Hearing. When the court issues an ex parte order removing a child from the care of a parent, the court shall schedule a hearing to review the order within seventy-two (72) hours of the child's removal. Upon issuance of an ex parte order in cases of domestic child abuse, the court shall schedule a hearing pursuant to the requirements of Minnesota Statutes, section 260C.148. Upon issuance of any other ex parte order, a hearing shall be scheduled on the request of a party or the county attorney at the earliest possible date.

Rule 51.04 Motion to Dismiss Petition

Any party or the county attorney may bring a motion to dismiss the petition upon any of the following grounds:

- (a) lack of jurisdiction over the subject matter;
- (b) lack of jurisdiction over the child; or
- (c) at or prior to the admit/deny hearing, failure of the petition to state facts which, if proven, establish a prima facie case to support the statutory grounds set forth in the petition.

Rule 51.05 Motion to Strike Pleadings

Any party or the county attorney may bring a motion to strike pleadings or portions of pleadings. If a motion to strike a pleading is granted, the pleading shall be physically removed from the court file. If a motion to strike a portion of a pleading is granted, that portion of the pleading shall be redacted from the court file.

Advisory Committee Comment

When the court grants a motion to strike pleadings or portions of pleadings, the objectionable matter should be physically removed from the court file and should not be considered by any fact finder with jurisdiction over the case.

**RULE 52. SIGNING OF PLEADINGS, MOTIONS,
AND OTHER PAPERS; SANCTIONS****Rule 52.01 Signing of Pleadings, Motions and Other Papers**

Subdivision 1. Party Represented by an Attorney. When a party is represented by an attorney, every pleading, motion, and other paper filed with the court shall be personally signed by at least one attorney of record in the attorney's individual name and shall state the attorney's address, telephone number, and attorney registration number.

Subd. 2. Party Not Represented by an Attorney. A party who is not represented by an attorney shall personally sign the pleading, motion, or other paper filed with the court and shall state the party's address and telephone number. If providing the address and telephone number would endanger the party, the address and telephone number may be provided to the court in a separate information statement and shall not be accessible to the public or to the parties. Upon notice and motion, the court may disclose the address and telephone number as it deems appropriate.

Subd. 3. Signing Constitutes Certification. Except when otherwise specifically provided by rule or statute, pleadings need not be verified by affidavit or accompanied by affidavit. The signature of an attorney or party constitutes a certification that:

- (a) the pleading, motion, or other paper has been read;
- (b) to the best of the signer's knowledge, information, and belief formed after reasonable inquiry that the pleading, motion or other paper is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and
- (c) it is not interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation.

Rule 52.02 Sanctions

If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including reasonable attorney fees.

RULE 53. DISCOVERY**Rule 53.01 Disclosure by Petitioner Without Court Order**

Upon the request of any party, the petitioner shall without court order make the following disclosures:

- (a) **Documents and Tangible Items.** The petitioner shall allow access at any reasonable time to all information, material, and items within the petitioner's possession or control which relate to the case. The petitioner shall permit inspection and copying of any relevant documents, recorded statements, or other tangible items which relate to the case within the possession or control of the petitioner and shall provide any party with the substance of any oral statements which relate to the case. The copying of a videotaped statement of a child abuse victim or alleged victim shall be

governed by Minnesota Statutes, section 611A.90. The petitioner shall not disclose the name of or any identifying information regarding a reporter of maltreatment except as provided in Minnesota Statutes, section 626.556, subdivision 11.

(b) **Witnesses.** The petitioner shall disclose to all other parties and the county attorney the names and addresses of the persons intended to be called as witnesses at trial. The county attorney or petitioner shall permit all other parties to inspect and copy such witnesses' written or recorded statements that relate to the case within the petitioner's knowledge.

(c) **Expert Witnesses.** Petitioner shall disclose to all other parties and the county attorney:

(1) the names and addresses of all persons intended to be called as expert witnesses at trial;

(2) the subject matter about which each expert witness is expected to testify; and

(3) a summary of the grounds for each opinion to be offered.

Rule 53.02 Disclosure by Other Parties Without Court Order

Upon the request of a party or the county attorney, any party who is not the petitioner shall without court order make the following disclosures:

(a) **Documents and Tangible Objects.** The party shall disclose and permit the county attorney, attorney for petitioner, or any other party to inspect and copy any book, paper, report, exam, scientific test, comparison, document, photograph, or tangible object which the party intends to introduce in evidence at the trial or concerning which the party intends to offer evidence at the trial.

(b) **Witnesses.** Each party shall disclose to every other party and the county attorney the names and addresses of the persons the party intends to call as witnesses at trial. Each party shall permit every other party and the county attorney to inspect and copy such witnesses' written or recorded statements within the party's knowledge as relates to the case.

(c) **Expert Witnesses.** Each party shall disclose to all other parties and the county attorney:

(1) the names and addresses of all persons intended to be called as expert witnesses at trial;

(2) the subject matter about which each expert witness is expected to testify; and

(3) a summary of the grounds for each opinion to be offered.

Rule 53.03 Information Not Discoverable

The following information shall not be discoverable by any party or the county attorney without a court order:

(a) documents containing privileged information between an attorney and client, legal research, records, correspondence, reports, or memoranda to the extent they contain the opinions, theories, or conclusions of the attorney for a party or other staff of an attorney for a party; and

(b) except as otherwise required by this rule, reports, memoranda, or internal documents made by an attorney for a party or staff of an attorney for a party.

Rule 53.04 Discovery Upon Court Order

Upon written motion of any party or the county attorney, the court may authorize other discovery methods, including, but not limited to, the following:

Subdivision 1. Physical and Mental Examinations.

(a) **Examination by Licensed Professional.** If the physical or mental condition of a party is in controversy, the court may order the party to submit to a physical or mental

examination by a licensed professional of the moving party's choice. The examination shall be at the moving party's expense. The order shall specify the time, place, manner, conditions, and the scope of the examination.

(b) **Copy of Report.** The examiner shall prepare a detailed report of the findings and conclusions of the examination and shall provide the report to the moving party who shall forward it to all other parties and the county attorney unless otherwise ordered by the court.

Subd. 2. Depositions.

(a) **Agreement of Parties.** A deposition may be taken upon agreement of the parties.

(b) **Order of Court.** Following the initial appearance, any party or the county attorney may move the court to order the testimony of any other person or party be taken by deposition upon oral examination, if:

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

(2) the party taking the deposition cannot procure the attendance of the witness at a hearing or trial by a subpoena, order of the court, or other reasonable means; or

(3) upon a showing that the information sought cannot be obtained by other means.

(c) **Subpoena.** Attendance of witnesses at oral deposition may be compelled by subpoena as provided by Rule 49. Attendance of parties at oral deposition shall be ordered by the court when the court grants a motion pursuant to subdivision 2(b) and shall be procured through service of the order and a notice of the time and place of the taking of the deposition on the party.

(d) **Notice.** A party or the county attorney taking a deposition shall give reasonable notice of the deposition. The 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. The parties shall agree on or the court shall order the manner of recording of the deposition. A stenographic transcription may be made at a party's request. Examination and cross-examination of witnesses shall be as permitted at trial. However, the deponent shall answer any otherwise objectionable question, except that which would reveal privileged material unless the privilege does not apply pursuant to Minnesota Statutes, section 626.556, subdivision 8, so long as it leads to or is reasonably calculated to lead to the discovery of any relevant data.

Subd. 3. Reports or Examinations and Tests. Upon motion and order of the court, any party shall disclose and permit the county attorney, attorney for petitioner, and other parties to inspect and copy any results or reports of physical or mental examinations, chemical dependency assessments and treatment records, scientific tests, experiments, and comparisons relating to the particular case. 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. Privileged communications are discoverable in accordance with Minnesota Statutes, section 626.556, subdivision 8.

Subd. 4. Experts. Discovery of facts known and opinions held by experts, otherwise discoverable pursuant to these rules and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(a) Upon motion, the court may order further discovery by means other than as provided in Rules 53.01 and 53.02, subject to such restrictions as to scope and such provisions concerning fees and expenses as the court may deem appropriate.

(b) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only

upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(c) Unless manifest injustice would result, (1) the court shall require the party seeking discovery to pay the expert a reasonable fee for time spent in responding to discovery pursuant to this rule, and (2) with respect to discovery obtained pursuant to this rule, the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

Rule 53.05 Time, Place, and Manner of Discovery

An order of the court granting discovery shall specify the time, place, and manner of discovery and inspection permitted and may prescribe such terms and conditions as are just.

Rule 53.06 Regulation of Discovery

Subdivision 1. Continuing Duty to Disclose. Whenever a party or the county attorney discovers additional material, information, or witnesses subject to disclosure, that party or the county attorney shall promptly notify the other parties and the county attorney of the existence of the additional material or information and the identity of the witnesses.

Subd. 2. Protective Orders. The trial court may order that specified disclosures be restricted or deferred, or make such other order as is appropriate to protect the child.

Subd. 3. Timely Discovery. Unless a court order otherwise provides, all material and information to which a party or the county attorney is entitled must be disclosed within fourteen (14) days of a request for disclosure.

Subd. 4. Sanctions. If, at any time, it is brought to the attention of the court that a party or the county attorney has failed to comply with an applicable discovery rule or order, or has failed to appear pursuant to a notice of taking of deposition, be sworn, or answer questions, the court may, upon motion, order such party or the county attorney to permit the discovery or inspection, grant a continuance, or enter such order as it deems just under the circumstances including:

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

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

(c) an order striking the petition or parts of the petition, answer, or parts of an answer, dismissing the proceeding, or entering a finding that the petition is proved or that certain facts alleged in the petition are proved;

(d) in lieu of any of the foregoing, an order treating as a contempt of court the failure to obey any order; or

(e) the court shall require the party or county attorney failing to act or the party's counsel, or both, to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds the failure was substantially justified or that other circumstances make an award of expenses unjust.

Subd. 5. Failure to Act. Failure to act as described in this rule may not be excused on the ground that the discovery sought is objectionable unless the party or county attorney failing to act has applied for a protective order as provided in subdivision 2.

RULE 54. DEFAULT

Rule 54.01 Procedure

If a party fails to appear after being properly served with a summons and notice that failure to appear may result in (a) a finding that the statutory grounds set forth in

the petition have been proved and (b) an order granting the relief requested, the court shall take testimony in support of the petition. If the petition is proved by the applicable burden of proof, the court shall enter an order granting the relief sought in the petition. The court shall not grant a default if a party was not served with a summons within the time period set forth in Rule 69.02, subdivision 5.

RULE 55. SETTLEMENT

Rule 55.01 Generally

Settlement discussions may be utilized to achieve one or more of the purposes set forth in Rule 37.02.

Rule 55.02 Content of Settlement Agreement

Any settlement agreement shall include a statement of:

- (a) the statutory grounds to be admitted;
- (b) the statutory grounds to be dismissed, if any;
- (c) the factual allegations to be admitted;
- (d) the factual allegations asserted by the petitioner but not admitted;
- (e) whether the court will enter or withhold adjudication; and
- (f) the issues to be addressed at the disposition hearing or the agreed upon disposition and case plan.

Rule 55.03 Procedure

Every settlement agreement shall be filed with the court or stated and agreed to on the record by the settling parties. Before approving a settlement agreement, the court shall determine that the agreement is in the best interests of the child and that each party to the agreement understands the content and consequences of the admission or settlement agreement and voluntarily consents to the agreement. When a party makes an admission, the court may accept or reject the admission based upon the terms of the settlement agreement or may conditionally accept or reject the admission pending receipt of a predisposition report prepared for the disposition hearing. The court may accept a settlement agreement that resolves the issues with respect to the petitioner and one or more but not all parties, and proceed with the matter with respect to the non-settling parties. If the court approves the settlement agreement, it shall proceed pursuant to Rule 75. If the court rejects the settlement agreement, it shall advise the parties and the county attorney of this decision in writing or on the record and shall call upon the parties to either affirm or withdraw the admission. If the admission is withdrawn, the court shall make a finding that the admission is not accepted and proceed pursuant to Rule 74.

Rule 55.04 Objection to Settlement Agreement - Termination of Parental Rights Matters and Permanent Placement Matters

If a party objects to a settlement agreement in a termination of parental rights matter or a permanent placement matter, that party shall, within five (5) days of service of notice of the proposed settlement agreement, adopt the existing pleadings and assume the burden of proof or file pleadings in support of an alternative. The matter shall be set for trial within the timelines set forth in Rule 74.

RULE 56. ALTERNATIVE DISPUTE RESOLUTION

[Reserved for future use.]

Advisory Committee Comment

The Committee recommends the appointment of a separate advisory committee to research, draft, and recommend rules for alternative dispute resolution in juvenile protec-

tion matters. In the meantime, the absence of a rule is not intended to imply that parties may not use mediation or other alternative dispute resolution to achieve results in the best interests of the child.

C. PARTIES AND PARTICIPANTS

RULE 57. PARTIES

Rule 57.01 Party Status

Subdivision 1. Parties Generally. Parties to a juvenile protection matter shall include:

- (a) the child's guardian ad litem;
- (b) the child's legal custodian;
- (c) the petitioner;
- (d) any person who intervenes as a party pursuant to Rule 59;
- (e) any person who is joined as a party pursuant to Rule 60; and
- (f) any other person, including a child, who is deemed by the court to be important to a resolution that is in the best interests of the child.

Subd. 2. Habitual Truant, Runaway, and Prostitution Matters. In addition to the parties identified in subdivision 1, in any matter alleging a child to be a habitual truant, a runaway, or engaged in prostitution, the child, regardless of age, shall also be a party. In any matter alleging a child to be a habitual truant, the child's school district may be joined as a party pursuant to Rule 60.

Subd. 3. Termination of Parental Rights Matters and Permanent Placement Matters. In addition to the parties identified in subdivision 1, in any termination of parental rights matter or permanent placement matter, the parties shall also include:

- (a) the child's parents, including any noncustodial parent and any adjudicated or presumed father;
- (b) any person entitled to notice of any adoption proceeding involving the child; and
- (c) any other person who is deemed by the court to be important to a resolution that is in the best interests of the child.

Rule 57.02 Rights of Parties

A party shall have the right to:

- (a) receive notice pursuant to Rule 69;
- (b) legal representation pursuant to Rule 61;
- (c) be present at all hearings unless excluded pursuant to Rule 63;
- (d) conduct discovery pursuant to Rule 53;
- (e) bring motions before the court pursuant to Rule 51;
- (f) participate in settlement agreements pursuant to Rule 55;
- (g) subpoena witnesses pursuant to Rule 49;
- (h) make argument in support of or against the petition;
- (i) present evidence;
- (j) cross-examine witnesses;
- (k) request review of the referee's findings and recommended order pursuant to Rule 43;
- (l) request review of the court's disposition upon a showing of a substantial change of circumstances or that the previous disposition was inappropriate;
- (m) bring post-trial motions pursuant to Rule 80;

- (n) appeal from orders of the court pursuant to Rule 82; and
- (o) any other rights as set forth in statute or these rules.

Advisory Committee Comment

The former rules did not distinguish between parties and participants. Rule 57 delineates the status and rights of parties, and Rule 58 delineates the status and rights of participants. There may be many individuals concerned about the best interests of a child who do not have the immediate connection to the child that justifies treating them as parties. The intent of this rule is to assure that such individuals are aware of the proceedings and are available to provide information useful to the court in making decisions concerning that child. A person with participant status may intervene as a party pursuant to Rule 59 or may be joined as a party pursuant to Rule 60.

Rule 57.03 Parties' Addresses

It shall be the responsibility of the petitioner to set forth in the petition the names and addresses of all parties if known to the petitioner after reasonable inquiry. It shall be the responsibility of each party to inform the court administrator of any change of address.

RULE 58. PARTICIPANTS

Rule 58.01 Participant Status

Unless already a party pursuant to Rule 57, or unless otherwise specified, participants to a juvenile protection matter shall include:

- (a) the child;
- (b) the child's parent, as well as any noncustodial parent and any alleged, adjudicated, or presumed father;
- (c) the local social services agency, when the local social services agency is not the petitioner;
- (d) any guardian ad litem for the child's legal custodian;
- (e) in the case of an Indian child, the child's Indian custodian and Indian tribe through the tribal representative;
- (f) grandparents with whom the child has lived within the two (2) years preceding the filing of the petition;
- (g) relatives providing care for the child and other relatives who request notice;
- (h) current foster parents and persons proposed as long-term foster care parents;
- (i) the spouse of the child, if any; and
- (j) any other person who is deemed by the court to be important to a resolution that is in the best interests of the child.

Advisory Committee Comment

The former rules did not distinguish between parties and participants. Rule 57 delineates the status and rights of parties, and Rule 58 delineates the status and rights of participants. There may be many individuals concerned about the best interests of a child who do not have the immediate connection to the child that justifies treating them as parties. The intent of this rule is to assure that such individuals are aware of the proceedings and are available to provide information useful to the court in making decisions concerning that child. A person with participant status may intervene as a party pursuant to Rule 59 or may be joined as a party pursuant to Rule 60.

Rule 58.02 Rights of Participants

Subdivision 1. Generally. Unless a participant intervenes as a party pursuant to Rule 59, or is joined as a party pursuant to Rule 60, the rights of a participant shall be limited to:

- (a) receiving notice pursuant to Rule 69;
- (b) attending hearings pursuant to Rule 63; and
- (c) offering information at the discretion of the court.

Subd. 2. Foster Parents and Relatives. Notwithstanding subdivision 1, any foster parent, pre-adoptive parent, relative providing care for the child, or relative to whom the local social services agency recommends transfer of permanent legal and physical custody of the child, shall be provided an opportunity to be heard in any hearing regarding the child. Any other relative may request an opportunity to be heard. This subdivision does not require that a foster parent, pre-adoptive parent, or relative providing care for the child be made a party to the matter. Each party and the county attorney shall be provided an opportunity to respond to any presentation by a foster parent or relative.

Rule 58.03 Participants' Addresses

It shall be the responsibility of the petitioner to set forth in the petition the names and addresses of all participants if known to the petitioner after reasonable inquiry. It shall be the responsibility of each participant to inform the court administrator of any change of address.

RULE 59. INTERVENTION

59.01 Intervention of Right

Subdivision 1. Child. The child who is the subject of the juvenile protection matter shall have the right to intervene as a party.

Subd. 2. Indian Custodian and Indian Tribe. In any proceeding for the foster care placement of, or the termination of parental rights to, an Indian child, the child's Indian custodian and the child's tribe shall have a right to intervene as a party at any point in the proceeding. An Indian tribe and an Indian custodian shall file with the court and serve on all parties and the county attorney a notice of intervention in order to exercise party status in proceedings involving an Indian child.

Subd. 3. Grandparents. Any grandparent of the child shall have the right to intervene as a party if the child has lived with the grandparent within the two (2) years preceding the filing of the petition.

Subd. 4. Parent. Any parent who is not a legal custodian of the child shall have the right to intervene as a party.

Subd. 5. Social Services Agency. The local social services agency shall have the right to intervene as a party in a case where the local social services agency is not the petitioner.

Rule 59.02 Permissive Intervention

Any person, including the county attorney, may be permitted to intervene as a party if the court finds that such intervention is in the best interests of the child.

Rule 59.03 Procedure

Subdivision 1. Intervention of Right. A person with a right to intervene pursuant to Rule 59.01 shall file with the court and serve upon all parties and the county attorney a notice of intervention, which shall include the basis for a claim to intervene. The notice of intervention as a matter of right form shall be available from the court administrator. The intervention shall be deemed accomplished upon service of the notice of intervention, unless a party or the county attorney files and serves a written objection within ten (10) days of the date of service. If a written objection is timely filed and served, the court shall schedule a hearing for the next available date.

Subd. 2. Permissive Intervention. A person, including the county attorney in a case where the local social services agency is not the petitioner, seeking permissive interven-

tion pursuant to Rule 59.02 shall file with the court and serve upon all parties and the county attorney a notice of motion and motion to intervene pursuant to Rule 51. The notice shall state the nature and extent of the person's interest in the child and the reason(s) that the person's intervention would be in the best interests of the child. A hearing on a motion to intervene shall be held within ten (10) days of the filing of the motion to intervene.

Rule 59.04 Effect of Intervention

The court may conduct hearings, make findings, and issue orders at any time prior to intervention being accomplished or denied. The intervention shall be effective as of the date granted and prior proceedings and decisions of the court shall not be affected.

RULE 60. JOINDER

Rule 60.01 Procedure

The court, upon its own motion or motion of a party or the county attorney pursuant to Rule 51, may join a person or entity as a party if the court finds that joinder is:

- (a) necessary for a just and complete resolution of the matter; and
- (b) in the best interests of the child.

The moving party shall serve the motion upon all parties, the county attorney, and the person proposed to be joined.

Advisory Committee Comment

In In Re the Welfare of Q.T.B., Nos. C7-97-2093 and C9-97-2094, (Minn. Ct. App. May 26, 1998), rev. denied (Minn. July 16, 1998), an unpublished decision of the Court of Appeals, the court considered the appellant's claim that she should have been joined as a party to a child in need of protection or services proceeding because she was at risk of losing her visitation rights with the infant who was the subject of the petition. The court cited Minn. R. Civ. P. 19.01 and determined that the rights of the appellant did not rise to the level of requiring joinder under Rule 19.01. While In Re the Welfare of Q.T.B. denies joinder under the specific facts of that case, it implies that joinder is permissible thus authorizing joinder in juvenile protection matters.

RULE 61. RIGHT TO REPRESENTATION; APPOINTMENT OF COUNSEL

Rule 61.01 Right to Representation

Every party and participant has the right to be represented by counsel in every juvenile protection matter. This right attaches no later than when the party or participant first appears in court.

Advisory Committee Comment

Rule 61.01 sets forth the basic principle that each person appearing in court has the right to be represented by counsel. Each person, however, does not necessarily have the right to appointment of counsel as provided in Rule 61.02.

Rule 61.02 Appointment of Counsel

Subdivision 1. Child.

(a) **Juvenile Protection Matters.** If the child desires counsel but is financially unable to employ it, the court shall appoint counsel to represent the child in any juvenile protection matter in which the court determines that such appointment is appropriate.

(b) **Truancy, Runaway, and Prostitution Matters.** The court shall appoint counsel for a child who cannot afford to retain counsel if the child, regardless of age, is the subject of a petition based on the statutory grounds that the child is a habitual truant, a runaway, or engaged in prostitution.

(c) **Indian Child.** In any juvenile protection matter involving an Indian child, the court may, in its discretion, appoint counsel for an Indian child upon a finding that such appointment is in the best interests of the child.

Subd. 2. Parent or Legal Custodian.

(a) **Juvenile Protection Matters.** If the child's parent or legal custodian desires counsel but is financially unable to employ it, the court shall appoint counsel to represent the parent or legal custodian in any juvenile protection matter in which the court determines that such appointment is appropriate.

(b) **Indian Custodian.** In any juvenile protection matter involving an Indian child, if the child's parent or Indian custodian is unable to afford it, the court shall appoint counsel to represent the parent or Indian custodian.

Subd. 3. Guardian Ad Litem. The court may appoint separate counsel for the guardian ad litem if necessary.

Subd. 4. Child's Preference. In any matter where the child is not represented by counsel, the court shall determine the child's preferences regarding the proceedings, if the child is of suitable age to express a preference.

Rule 61.03 Reimbursement

When counsel is appointed for a child or a child's parent or legal custodian, the court may order, after giving the parent or legal custodian reasonable opportunity to be heard, that the fees and expenses of court appointed counsel shall be reimbursed in whole or in part by the parent or legal custodian depending upon the ability of the person to pay.

Rule 61.04 Notice of Right to Representation

Any child, parent, or legal custodian who appears in court and is not represented by counsel shall be advised by the court on the record of the right to representation pursuant to Rule 61.

Rule 61.05 Certificate of Representation

An attorney representing a client in a juvenile protection matter, other than a public defender or county attorney, shall on or before the attorney's first appearance file with the court a certificate of representation.

Rule 61.06 Withdrawal of Counsel

An attorney representing a party in a juvenile protection matter, including a public defender, shall continue representation until such time as:

- (a) all proceedings in the matter have been completed;
- (b) the attorney has been discharged by the client in writing or on the record;
- (c) the court grants the attorney's ex parte motion for withdrawal; or
- (d) the court approves the attorney's ex parte written substitution of counsel.

If the court grants an attorney's ex parte motion for withdrawal, the withdrawing attorney shall serve upon all parties and the county attorney a copy of the order permitting withdrawal.

RULE 62. GUARDIAN AD LITEM

Rule 62.01 Mandatory Appointment for Child

Subdivision 1. Generally. The court shall appoint a guardian ad litem to advocate for the best interests of each child who is the subject of a juvenile protection matter.

The court may appoint a person to serve as guardian ad litem for more than one child in a proceeding. The appointment of a guardian ad litem shall be made pursuant to Rule 904 of the Rules of Guardian Ad Litem Procedure. The guardian ad litem shall carry out the responsibilities set forth in Rule 908 of the Rules of Guardian Ad Litem Procedure. The guardian ad litem shall have the rights and powers set forth in Rule 909 of the Rules of Guardian Ad Litem Procedure.

Subd. 2. Guardian Ad Litem Not Also Attorney for Child. Counsel for the child shall not also serve as the child's guardian ad litem or as legal counsel for the guardian ad litem.

Advisory Committee Comment

Rule 62.01 is consistent with Minnesota Statutes, section 260C.163, subdivision 5, which provides as follows:

The court shall appoint a guardian ad litem to protect the interests of the minor when it appears, at any stage of the proceedings, that the minor is without a parent or guardian, or that the minor's parent is a minor or incompetent, or that the parent or guardian is indifferent or hostile to the minor's interests, and in every proceeding alleging a child's need for protection or services under Minnesota Statutes, section 260C.007, subdivision 4.

With respect to the appointment of guardians ad litem, Minnesota Statutes, section 260C.163, subdivision 5, complies with the federal Child Abuse Prevention and Treatment Act (CAPTA), 42 U.S.C. section 5106a(b)(2)(A)(ix). CAPTA mandates that for a state to qualify to receive federal grants for child protection prevention and treatment services, the state must have in place:

[P]rovisions and procedures requiring that in every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem, who may be an attorney or a court appointed special advocate (or both), shall be appointed to represent the child in such proceedings -

(I) to obtain first-hand, a clear understanding of the situation and needs of the child; and

(II) to make recommendations to the court concerning the best interests of the child....

42 U.S.C. section 5106a(b)(2)(A)(ix)(1999).

The types of cases to which guardians ad litem must be appointed are much more expansive under Minnesota's statutes than under federal statutes. Minnesota requires the appointment of a guardian ad litem not only in cases where the act of an adult places the child in need of protection or services, but also in cases where the child's act or status places the child in need of protection or services. See Minnesota Statutes, section 260C.163, subdivision 5.

Rule 62.02 Discretionary Appointment for Child's Parent or Legal Custodian

The court may sua sponte or upon the written or on-the-record request of a party or participant appoint a guardian ad litem for a parent who is a party or the legal custodian if the court determines that the parent or legal custodian:

(a) is incompetent 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 parent is under eighteen (18) years of age and is without a parent or legal custodian, or that considered in the context of the matter the minor parent's parent or legal custodian is unavailable, incompetent, indifferent to, hostile to, or has interests in conflict with the interests of the minor parent.

Appointment of a guardian ad litem for a parent shall not result in discharge of counsel for the parent.

Rule 62.03 Term of Service of Guardian Ad Litem

Unless otherwise ordered by the court, upon appointment to a juvenile protection matter the guardian ad litem shall serve as follows:

(a) When the permanency plan for the child is to return the child home, the court shall issue an order dismissing the guardian ad litem from the case upon issuance of an order returning the child to the child's home and terminating the juvenile protection matter.

(b) When the permanency plan for the child is transfer of permanent legal and physical custody to a relative, the court shall issue an order dismissing the guardian ad litem from the case upon issuance of the order transferring custody and terminating the juvenile protection matter.

(c) When the permanency plan for the child is termination of parental rights leading to adoption, the guardian ad litem shall continue to serve for the purpose of monitoring progress toward adoption, and shall provide the foster parent and child, if of suitable age, with the address and phone number of the guardian ad litem so that they may contact the guardian ad litem if necessary.

(d) When the permanency plan for the child is long-term foster care, the guardian ad litem shall continue to serve for the purpose of monitoring the child's welfare, and shall provide the foster parent and child, if of suitable age, with the address and phone number of the guardian ad litem so that they may contact the guardian ad litem if necessary.

RULE 63. PRESENCE AT PROCEEDINGS

Rule 63.01 Right to Attend Hearing

Any person who is entitled to summons or notice pursuant to these rules or who is summoned or given notice shall have the right to attend the hearing to which the summons or notice relates.

Advisory Committee Comment

Pursuant to Rule 57, a party has the right to be present in person at any hearing. For a child who is a party, the person with physical custody of the child should generally be responsible for assuring the child's attendance at hearings. When a child is in emergency protective care or protective care, the local social services agency is responsible for ensuring the child's presence in court. If the child is in the custody of the county in out-of-home placement, the social services agency should transport the child to the hearing. If the agency fails to make arrangements for the child to attend the hearing, the child's attorney or guardian ad litem may need to ask for a continuance and for an order requiring the child to be brought to the next hearing.

Rule 63.02 Absence Does Not Bar Hearing

The absence from a hearing of any party shall not prevent the hearing from proceeding provided appropriate notice has been served.

Rule 63.03 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 interests of the child to do so. If a person other than counsel or guardian ad litem engages in conduct that 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.

Rule 63.04 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 64. CLOSED PROCEEDINGS**Rule 64.01 Attendance at Hearings**

Only the following may attend hearings:

- (a) parties pursuant to Rule 57;
- (b) participants pursuant to Rule 58;
- (c) the county attorney;
- (d) persons requested by a party or by the county attorney who are approved by the court; and
- (e) persons authorized by the court under such conditions as the court may approve.

Advisory Committee Comment

On June 22, 1998, the Minnesota Supreme Court began a three-year, twelve-county Open Hearings Pilot Project under which juvenile protection hearings are presumed open to the public, the court may close or partially close a hearing only in exceptional circumstances, and juvenile protection case records, with limited exceptions, are presumed accessible to the public. Amended Order Establishing Pilot Project on Open Hearings in Juvenile Protection Matters, File No. C2-95-1476 (Minn. S. Ct., filed Feb. 6, 1998), and Order Promulgating Rule on Public Access to Records Relating to Open Juvenile Protection Proceedings, File No. C2-95-1476 (Minn. S. Ct., filed May 29, 1998). The following twelve counties are participating in the pilot project: Chisago, Clay, Goodhue, Houston, Hennepin, LeSueur, Marshall, Pennington, Red Lake, St. Louis (Virginia court only), Stevens, and Watonwan. The pilot project is scheduled to continue until June 21, 2001. A copy of the pilot project rules regarding open juvenile court hearings and accessibility of records is available from the court administrator of each county participating in the Open Hearings Pilot Project.

D. COURSE OF CASE**RULE 65. EMERGENCY PROTECTIVE CARE ORDER AND NOTICE****Rule 65.01 Emergency Protective Care Defined**

A child is in "emergency protective care" when:

- (a) taken into custody by a peace officer pursuant to Minnesota Statutes, section 260C.151, subdivision 6; 260C.154; or 260C.175;
- (b) ordered into placement pursuant to Minnesota Statutes, section 260C.178 or 260B.198 before a disposition; or
- (c) returned home before a disposition with court-ordered conditions of release.

Advisory Committee Comment

A child taken into emergency protective care should never be held in secure detention.

Rule 65.02 Ex Parte Order for Emergency Protective Care

Subdivision 1. Generally. The court may issue an ex parte order for emergency protective care if it finds from the facts set forth in the petition or any supporting affidavits or sworn testimony that:

- (a) the child has left or been removed from a court-ordered placement; or
- (b) there is a prima facie showing that the child is in surroundings or conditions that endanger the child's health, safety, or welfare and that require that the child's custody and care be immediately assumed by the court.

Subd. 2. Habitual Truant, Runaway, and Prostitution Matters. In addition to the provisions of subdivision 1, the court may issue an ex parte order for emergency protective care if it finds from the facts set forth in the petition or any supporting affidavits or sworn testimony that:

- (a) there is a prima facie showing that the child has engaged in prostitution pursuant to Minnesota Statutes, section 260C.007, subdivision 4(11); is a habitual truant pursuant to Minnesota Statutes, section 260C.007, subdivision 4(14); or is a runaway pursuant to Minnesota Statutes, section 260C.007, subdivision 4(13); 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.

Rule 65.03 Contents of Order

An order for emergency protective care shall be signed by a judge and shall:

- (a) order the child to be taken to an appropriate relative, a designated caregiver pursuant to Minnesota Statutes, Chapter 257A, or a shelter care facility designated by the court pending an emergency protective care hearing pursuant to Rule 67;
- (b) state the name and address of the child, unless such information would endanger 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 gender 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 emergency protective care;
- (e) state the reasons for any limitation on the time or location of the execution of the emergency protective care order;
- (f) state the date when issued and the county and court where issued; and
- (g) state the date, time, and location of the emergency protective care hearing.

Rule 65.04 Execution of Order

An order for emergency protective care:

- (a) may only be executed by a peace officer authorized by law to execute a warrant;
- (b) shall be executed by taking the child into custody;
- (c) may be executed at any place in the state except where prohibited by law or unless otherwise ordered by the court;
- (d) may be executed at any time unless otherwise ordered by the court; and
- (e) need not be in the peace officer's possession at the time the child is taken into emergency protective care.

Rule 65.05 Notice

When an order for emergency protective care is executed, the peace officer shall notify the child and the child's parent or legal custodian:

- (a) of the existence of the order for emergency protective care;
 - (b) of the reasons why the child is being taken into emergency protective care;
 - (c) of the time and place of the emergency protective care hearing;
 - (d) of the name, address, and telephone number of the local social services agency;
- and

(e) that the parent or legal custodian or child may request that the court place the child with a relative or a designated caregiver rather than in a shelter care facility.

The notice shall be delivered in written form and, when possible, the content of the notice shall also be orally summarized and explained. If the parent or legal custodian is not present when the child is removed from the premises, the notice shall be left with an adult on the premises. If no adult is present at the time the child is removed, the notice shall be left in a conspicuous place on the premises.

Rule 65.06 Enforcement of Order

An emergency protective care order shall be enforceable by any peace officer in any jurisdiction.

RULE 66. PROCEDURES DURING PERIOD OF EMERGENCY PROTECTIVE CARE

Rule 66.01 Release from Emergency Protective Care

Subdivision 1. Child Taken Into Emergency Protective Care Pursuant to Court Order.

(a) **Release Prohibited.** A child taken into emergency protective care pursuant to a court order shall be held for seventy-two (72) hours unless the court issues an order authorizing release.

(b) **Release Required.** A child taken into emergency protective care pursuant to a court order shall not be held in emergency protective care for more than seventy-two (72) hours unless an emergency protective care hearing has commenced pursuant to Rule 67 and the court has ordered continued protective care.

Subd. 2. Child Taken Into Emergency Protective Care Without Court Order.

(a) **Release Required.** A child taken into emergency protective care without a court order shall be released unless an emergency protective care hearing pursuant to Rule 67 has commenced within seventy-two (72) hours of the time the child was removed from home and the court has ordered continued protective care.

(b) **Discretionary Release by Peace Officer or County Attorney.** When a peace officer has taken a child into emergency protective care without a court order, the peace officer, peace officer's supervisor, or the county attorney may release the child any time prior to an emergency protective care hearing. The peace officer, the peace officer's supervisor, or the county attorney who releases the child may not place any conditions of release on the child.

Rule 66.02 Discretionary Release by Court; Custodial Conditions

The court at any time before an emergency protective care hearing may release a child and may:

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

(b) impose any other conditions upon the child or the child's parent or legal custodian deemed reasonably necessary and consistent with criteria for protecting the child.

Any conditions terminate after seventy-two (72) hours unless a hearing has commenced pursuant to Rule 67 and the court has ordered continuation of the condition.

Rule 66.03 Release to Custody of Parent or Other Suitable Person

A child released from emergency protective care shall be released to the custody of the child's parent, legal custodian, or other suitable person.

Rule 66.04 Reports

Subdivision 1. Report by Peace Officer. Any report required by Minnesota Statutes, section 260C.176, subdivision 4, shall be filed with the court on or before the first court day following placement of the child and the report shall include at least:

- (a) the time the child was taken into emergency protective care;
- (b) the time the child was delivered for transportation to the shelter care facility;
- (c) the reasons why the child was taken into emergency protective care;
- (d) the reasons why the child has been placed;
- (e) a statement that the child and the child's parent or legal custodian have received the advisory required by Minnesota Statutes, section 260C.176, subdivision 3, or the reasons why the advisory has not been made; and
- (f) reasons to support the non-disclosure, 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.

Subd. 2. Report by Supervisor of Shelter Care Facility. Any report required by Minnesota Statutes, section 260C.176, subdivision 6, shall be filed with the court on or before the first 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 shelter care facility.

RULE 67. EMERGENCY PROTECTIVE CARE HEARING**Rule 67.01 Timing**

Subdivision 1. Generally. The court shall hold an emergency protective care hearing within seventy-two (72) hours of the child being taken into emergency protective care unless the child is released pursuant to Rule 66. The purpose of the hearing shall be to determine whether the child shall be returned home or placed in protective care.

Subd. 2. Continuance. When witnesses are to be called, the court may, upon written or oral motion of a party made at the emergency protective care hearing, continue the emergency protective care hearing for a period not to exceed eight (8) days. A continuance may be granted:

- (a) upon a determination by the court that there is a prima facie showing that the child should be held in emergency protective care pursuant to Rule 65; and
- (b) if the court finds that a continuance is necessary for the protection of the child, for the accumulation or presentation of necessary evidence or witnesses, to protect the rights of a party, or for other good cause shown.

Advisory Committee Comment

Subdivision 2 requires that the court make certain findings before permitting a continuance. This provision recognizes that parties may need time to prepare for the hearing, but assures that a child will not be held unnecessarily during the continuance.

Rule 67.02 Notice of Hearing

The court shall inform the county attorney, the child, and the child's counsel, guardian ad litem, parent, legal custodian, spouse, and school district of residence as required by Minnesota Statutes, section 127A.47, subdivision 6, of the time and place of the emergency protective care hearing.

Rule 67.03 Inspection of Reports

Prior to the emergency protective care hearing, the parties shall be permitted to inspect reports or other written information or records that any party intends to present at the hearing.

Advisory Committee Comment

Rule 67.03 places upon each party the burden of providing to opposing parties all documentation the party intends to introduce at the hearing. The rule is intended to ensure that the parties have the relevant information before the hearing so they are prepared to respond. This rule is not intended to limit discovery allowed by Rule 53.

Rule 67.04 Determination Regarding Notice

During the hearing, the court shall determine whether notice has been provided in compliance with Rule 69 and what further efforts, if any, must be taken to notify all parties and participants as rapidly as possible of the pendency of the matter and the date and time of the next hearing.

Rule 67.05 Advisory

At the beginning of the emergency protective care hearing the court shall on the record advise all parties and participants present of:

- (a) the reasons why the child was taken into emergency protective care;
- (b) the substance of the statutory grounds and supporting factual allegations set forth in the petition;
- (c) the purpose and scope of the hearing;
- (d) the possible consequences of the proceedings;
- (e) the right of the child and the child's parent or legal custodian to representation pursuant to Rule 61;
- (f) the right of the parties to present evidence and to cross-examine witnesses regarding whether the child should return home with or without conditions or whether the child should be placed in protective care; and
- (g) that failure to appear at future hearings could result in a finding that the petition has been proved, issuance of an order adjudicating the child in need of protection or services, and an order transferring permanent legal and physical custody of the child to another.

Rule 67.06 Evidence

The court may admit any evidence, including reliable hearsay and opinion evidence, that is relevant to the decision of whether to continue protective care of the child or return the child home. Privileged communications may be admitted in accordance with Minnesota Statutes, section 626.556, subdivision 8.

Rule 67.07 Filing and Service of Petition

A petition shall be filed with the court and may be served at or before the emergency protective care hearing.

Rule 67.08 Protective Care Determinations

Subdivision 1. Initial Finding. The court shall dismiss the petition if it finds that the petition fails to establish a prima facie showing that a juvenile protection matter exists and that the child is the subject of that matter.

Subd. 2. Endangerment.

(a) **Findings.** If the court finds that the petition establishes a prima facie showing that a juvenile protection matter exists and that the child is the subject of that matter, the court shall then determine whether the petition also makes a prima facie showing that:

- (1) the child or others would be immediately endangered by the child's actions if the child were released to the care of the parent or legal custodian; or

(2) the child's health, safety, or welfare would be immediately endangered if the child were released to the care of the parent or legal custodian.

(b) **Determination.** If the court finds that endangerment exists pursuant to this subdivision, the court shall continue protective care or release the child to the child's parent or legal custodian and impose conditions to assure the safety of the child or others. If the court finds that endangerment does not exist, the court shall release the child to the child's parent or legal custodian subject to reasonable conditions of release.

Advisory Committee Comment

Rule 67.08 is consistent with Minnesota Statutes, section 260C.178, subdivision 1(b), which provides:

Unless there is reason to believe that the child would endanger self or others, not return for a court hearing, run away from the child's parent, guardian, or custodian or otherwise not remain in the care or control of the person to whose lawful custody the child is released, or that the child's health or welfare would be immediately endangered, the child shall be released to the custody of a parent, guardian, custodian, or other suitable person, subject to reasonable conditions of release including, but not limited to, a requirement that the child undergo a chemical use assessment as provided in [Minnesota Statutes, section] 260C.157, subdivision 1.

Rule 67.09 Factors

Subdivision 1. Generally. Except in cases described in subdivision 2, or when the parental rights of the parent to a sibling of the child have been terminated involuntarily, or the child is an abandoned infant as defined in Minnesota Statutes, section 260C.301, subdivision 2, at the emergency protective care hearing the court shall require petitioner to present information regarding the following issues:

(a) whether the local social services agency made reasonable efforts, or active efforts in the case of an Indian child, to prevent or eliminate the need for removal of the child from the home;

(b) whether there are services the court could order that would allow the child to safely return home;

(c) whether responsible relatives or other responsible adults are available to provide services or to serve as placement options if licensed;

(d) whether the placement proposed by the agency is the least restrictive and most home-like setting that meets the needs of the child;

(e) whether restraining orders, or orders expelling an allegedly abusive parent from the home, are appropriate;

(f) whether orders are needed for examinations, evaluations, or immediate services;

(g) the terms and conditions for parental visitation; and

(h) what consideration has been given for financial support of the child.

Subd. 2. Egregious Harm. At the emergency protective care hearing, or at any time prior to adjudication, and upon notice and request of the county attorney, the court shall make the following determinations:

(a) whether a termination of parental rights petition has been filed stating that (1) the parent has subjected a child to egregious harm as defined in Minnesota Statutes, section 260C.007, subdivision 26; (2) the parental rights of the parent to another child have been involuntarily terminated; or (3) the child is an abandoned infant under Minnesota Statutes, section 260C.301, subdivision 2;

(b) that the county attorney has determined not to proceed with a termination of parental rights petition under Minnesota Statutes, section 260C.307; or

(c) whether a termination of parental rights petition or other petition according to Minnesota Statutes, section 260C.201, subdivision 11, has been filed alleging a prima facie case that the provision of services or future services for the purpose of rehabilitation and reunification is futile and therefore unreasonable under the circumstances.

Rule 67.10 Protective Care Findings and Order

At the conclusion of the emergency protective care hearing the court shall issue a written order which shall include findings pursuant to Rules 67.08 and 67.09 and which shall order:

- (a) that the child:
 - (1) continue in protective care;
 - (2) return home with conditions in place to assure the safety of the child or others;
 - (3) return home with reasonable conditions of release; or
 - (4) return home with no conditions;
- (b) conditions pursuant to subdivision (a), if any, to be imposed upon the parent, legal custodian, or a party;
- (c) services, if any, to be provided to the child and the child's family;
- (d) where the child shall be placed;
- (e) terms of visitation pending further proceedings; and
- (f) the parent's responsibility for costs of care pursuant to Minnesota Statutes, section 260C.331, subdivision 1.

Advisory Committee Comment

Minnesota Statutes, section 260C.178, subdivision 1(b), provides as follows:

In a proceeding regarding a child in need of protection or services, the court, before determining whether a child should continue in custody, shall also make a determination, consistent with [Minnesota Statutes, section] 260.012 as to whether reasonable efforts, or in the case of an Indian child, active efforts, according to the Indian Child Welfare Act of 1978, United States Code, title 25, section 1912(d), were made to prevent placement or to reunite the child with the child's family, or that reasonable efforts were not possible. The court shall also determine whether there are available services that would prevent the need for further detention.

In compliance with the statutory mandate of Minnesota Statutes, section 260C.178, Rules 67.08 and 67.09 require the court to elicit relevant evidence from the petitioner and make findings as to whether the child is in imminent danger, whether the county made reasonable efforts to prevent removal or eliminate the need for removal, and whether there are services the court could order to allow the child to safely return home. Rule 67.10 requires that the court issue a written order that includes specific findings in support of the order.

Rule 67.11 Protective Care Review

Subdivision 1. Consent for Continued Protective Care. The court may, with the consent of the parties and the county attorney, order that the child continue in protective care even if the circumstances of the parent, legal custodian, or child have changed.

Subd. 2. Release from Protective Care on Consent of Parties and the County Attorney. The court may, with the consent of the parties and the county attorney, order that a child be released from protective care. If the child has no guardian ad litem, the court may not release the child from protective care without a court hearing.

Subd. 3. Formal Review.

(a) **On Motion of Court.** The court may on its own motion schedule a formal review hearing at any time.

(b) **On Request of a Party or the County Attorney.** A party or the county attorney may request a formal hearing concerning continued protective care by filing a motion with the court. The court shall schedule a hearing and provide notice pursuant to Rule 69 if the motion states:

(1) that the moving party has new evidence concerning whether the child should be continued in protective care; or

(2) that the party has an alternate arrangement to provide for the safety and protection of the child.

(c) **Evidence.** The court may admit any evidence, including reliable hearsay and opinion evidence, which is relevant to the decision whether to continue protective care of the child or return the child home. Privileged communications may be admitted in accordance with Minnesota Statutes, section 626.556, subdivision 8.

(d) **Findings and Order.** At the conclusion of the formal review hearing the court shall:

(1) return the child to the care of the parent or legal custodian with or without reasonable conditions of release if the court does not make findings pursuant to subdivision 3(d)(2);

(2) continue the child in protective care or release the child with conditions to assure the safety of the child or others if the court finds that the petition states a prima facie case to believe that a child protection matter exists and that the child is the subject of that matter, and (a) the child or others would be immediately endangered by the child's actions if the child were released to the care of the parent or legal custodian or (b) the child's health, safety or welfare would be immediately endangered if the child were released to the care of the parent or legal custodian; or

(3) modify the conditions of release.

RULE 68. METHODS OF FILING AND SERVICE

Rule 68.01 Filing by Facsimile Transmission

Subdivision 1. Generally. Any paper may be filed with the court by facsimile transmission. Filing shall be deemed complete at the time that the facsimile transmission is received by the court. The facsimile shall have the same force and effect as the original. Only facsimile transmission equipment that satisfies the published criteria of the supreme court shall be used for filing in accordance with this rule.

Subd. 2. Fees; Original Document. Within five (5) days after the court has received the transmission, the party filing the document shall forward the following to the court:

(a) a \$5 transmission fee, unless otherwise provided by statute or rule or otherwise ordered by the court;

(b) the original signed document; and

(c) the applicable filing fee, if any.

Subd. 3. Noncompliance. Upon failure to comply with the requirements of this rule, the court may make such orders as are just including, but not limited to, an order striking pleadings or parts thereof, staying further proceedings until compliance is complete, or dismissing the action, proceeding, or any part thereof.

Rule 68.02 Types of Service

Subdivision 1. Personal Service. Personal service means personally delivering the original document to the person to be served or leaving it at the person's home or usual place of abode with a person of suitable age and discretion residing therein, unless the court authorizes service by publication.

Subd. 2. U.S. Mail. Service by U.S. mail means placing a copy of the document in the U.S. mail, first class, postage prepaid, addressed to the person to be served.

Subd. 3. Publication. Service by publication means the publication in full of the notice or other papers in the regular issue of a qualified newspaper, once each week for the number of weeks specified. Service by publication substitutes for personal service where authorized by the court. The court shall authorize service by publication only if the petitioner has filed a written statement or affidavit describing unsuccessful efforts to locate the party to be served.

Subd. 4. Facsimile Service. Service by facsimile means transmission by facsimile equipment that satisfies the published criteria of the supreme court, addressed to the person to be served.

Rule 68.03 Service by Facsimile Transmission

Unless these rules require personal service, by agreement of the parties any document may be served by facsimile transmission. The facsimile shall have the same force and effect as the original.

Rule 68.04 Service Upon Counsel; Social Services Agency

Unless personal service upon a party is required, service upon counsel for a party or counsel for a participant shall be deemed service upon the party or participant. Service upon the county attorney shall be deemed to be service upon the social services agency.

Rule 68.05 Service of Subpoena

A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the state.

Rule 68.06 Completion of Service

Service by mail is complete upon mailing to the last known address of the person to be served. Service by facsimile is complete upon completion of the facsimile transmission.

Rule 68.07 Proof of Service

On or before the date set for appearance, the person serving the document shall file with the court an affidavit of service stating:

- (a) whether the document was served;
- (b) how the document was served;
- (c) the person on whom the document was served; and
- (d) the date and place of service.

If the court administrator served the document, the court administrator may file a written statement in lieu of an affidavit.

RULE 69. SUMMONS AND NOTICE

Rule 69.01 Commencement

A juvenile protection matter is commenced by filing a petition with the court.

Rule 69.02 Summons

Subdivision 1. Definition. A summons is a document issued by the court that orders the initial appearance in court of the person to whom it is directed.

Subd. 2. Upon Whom.

(a) **Generally.** The court shall serve a summons upon each party, the person with physical custody of the child, and any other person whose presence the court deems necessary to a determination concerning the best interests of the child.

(b) **Termination of Parental Rights Matters.** In addition to the requirements of subdivision 2(a), in any termination of parental rights matter a copy of the petition shall be served with the summons and shall be served upon the county attorney, any guardian ad litem for the child's legal custodian, the guardian ad litem for the child, and any attorney representing a party in an ongoing child in need of protection or services proceeding involving the subject child.

Subd. 3. Service.

(a) **Personal Service Generally Required.** The summons shall be personally served in all juvenile protection matters unless the court orders service by publication pursuant to Rule 68.02, subdivision 3.

(b) **Habitual Truant, Runaway, and Prostitution Matters.**

(1) **Generally.** When the sole allegation is that the child is a habitual truant, a runaway, or engaged in prostitution, initial service may be made as follows:

(i) the court may send notice and a copy of the petition or notice to appear by U.S. mail to the legal custodian, the person with custody or control of the child, and each party and participant, or

(ii) a peace officer may issue a notice to appear or a citation.

(2) **Failure to Appear.** If the child or the child's parent or legal custodian or the person with custody or control of the child fails to appear in response to the initial service, the court shall order such person to be personally served with a summons.

Subd. 4. Content.

(a) **Generally.** A summons shall contain or have attached:

(1) a copy of the petition, court order, motion, affidavit or other legal documents not previously provided (however, these documents shall not be contained in or attached to the summons and complaint if the court has authorized service of the summons by publication pursuant to Rule 69.02, subdivision 3(a));

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

(3) a statement describing the purpose of the hearing;

(4) a statement that failure to appear may result in a finding of contempt of the court's order to appear or the issuance of a warrant for the arrest of the person summoned or both; and

(5) a statement explaining the right to representation pursuant to Rule 61.

(b) **Child in Need of Protection or Services Matters.** In addition to the content requirements set forth in subdivision (4)(a), in any child in need of protection or services matter the summons shall also contain or have attached a statement that:

(1) if the person summoned fails to appear, the court may conduct the hearing in the person's absence; and

(2) a possible consequence of the hearing is that the child may be removed from the home of the parent or legal custodian and placed in foster care, and such removal may lead to other proceedings for permanent out-of-home placement of the child or termination of parental rights.

(c) **Termination of Parental Rights Matters.** In addition to the content requirements set forth in subdivision 4(a), in any termination of parental rights matter the summons shall also contain or have attached a statement that if the person summoned fails to appear the court may conduct the hearing in the person's absence and the hearing may result in termination of the person's parental rights.

(d) **Permanent Placement Matters.** In addition to the content requirements set forth in subdivision 4(a), in any permanent placement matter the summons shall also contain or have attached a statement that if the person summoned fails to appear the court may conduct the hearing in the person's absence and the hearing may result in an order granting the relief requested in the petition.

Subd. 5. Timing of Service.

(a) **Generally.** The summons shall be served either at or before the emergency protective care hearing held pursuant to Rule 67, or at least three (3) days prior to the admit/deny hearing, whichever is earlier. At the request of a party, the hearing shall not be held at the scheduled time if the summons has been served less than three (3) days before the hearing. If service is made outside the state or by publication, the summons shall be personally served, mailed, or last published at least twenty (20) days before the hearing.

(b) **Termination of Parental Rights Matters and Permanent Placement Matters.** In any termination of parental rights matter or permanent placement matter the summons shall be served upon all parties in a manner that will allow for completion of service at least ten (10) days prior to the date set for the admit/deny hearing. In cases where publication under Minnesota Statutes, section 645.11, is required, published notice shall be made for three (3) weeks with the last publication at least ten (10) days before the date of the hearing.

Subd. 6. Waiver. Service is waived by voluntary appearance in court or by a written waiver of service filed with the court.

Subd. 7. Failure to Appear. If any person personally served with a summons or subpoena fails, without reasonable cause, to appear or bring the child if ordered to do so, or if the court has reason to believe the person is avoiding personal service, the court may sua sponte or upon the motion of a party or the county attorney pursuant to Rule 51 proceed against the person for contempt of court or the court may issue a warrant for the person's arrest, or both. When it appears to the court that service will be ineffectual, or that the welfare of the child requires that the child be immediately brought into the custody of the court, the court may issue a warrant for immediate custody of the child.

Advisory Committee Comment

Rule 69.02 specifies the procedure for summoning a party to his or her first appearance in a case. Rule 69.03 specifies the procedure for providing initial notice to a participant. While failure to notify a noncustodial parent does not create a jurisdictional defect, the best practice is to invite that parent to participate in the proceedings as failure to do so may create substantial barriers to permanency.

Rule 69.03 Notice of Hearing

Subdivision 1. Definition. A notice is a document issued by the court notifying the person to whom it is addressed of the specific time and place of a hearing.

Subd. 2. Upon Whom. The court shall serve notice upon all participants identified in Rule 58.

Subd. 3. Content. A notice shall contain or have attached a statement:

- (a) setting forth the time and place of the hearing;
- (b) describing the purpose of the hearing;
- (c) explaining the right to representation pursuant to Rule 61;
- (d) explaining intervention as of right and permissive intervention pursuant to Rule 59;
- (e) that if the person fails to appear at the hearing the court may still conduct the hearing and grant appropriate relief; and
- (f) that it is the responsibility of the individual to notify the court administrator of any change of address.

Subd. 4. Service by Mail or Delivery at Hearing. Notice shall be served by U.S. Mail or may be delivered at a hearing. The court may order service of notice to be by personal service.

Subd. 5. Timing of Service. A copy of the notice shall be mailed at least five (5) days before the date of the hearing or fifteen (15) days before the hearing if mailed to an address outside the state.

Advisory Committee Comment

Rule 69.02 specifies the procedure for summoning a party to his or her first appearance in a case. Rule 69.03 specifies the procedure for providing initial notice to a participant. While failure to notify a noncustodial parent does not create a jurisdictional defect, the best practice is to invite that parent to participate in the proceedings as failure to do so may create substantial barriers to permanency.

Rule 69.04 Orders on the Record

An oral order stated on the record directed to the parties which either separately or with written supplementation contains the information required by this rule is sufficient to provide notice and compel the presence of the parties at a stated time and place. Such an order shall be reduced to writing pursuant to Rule 46.

Rule 69.05 Indian Child

In any juvenile protection proceeding where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of the Indian child shall notify the parent or Indian custodian and the Indian child's tribe of the pending proceedings and of the right of intervention pursuant to Rule 59. Such notice shall be by registered mail with return receipt requested, unless personal service has been accomplished. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary of the Interior in like manner, who shall have fifteen (15) days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement proceeding shall be held until at least ten (10) days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary of the Interior, provided that the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty (20) additional days to prepare for such proceeding.

RULE 70. PETITION

Rule 70.01 Drafting and Filing

Subdivision 1. Generally. A petition may be drafted and filed by the county attorney or any responsible person.

Subd. 2. Habitual Truant and Runaway Matters. A matter based solely on grounds that a child is a habitual truant or a runaway may be initiated by citation issued by a peace officer or school attendance officer. A citation shall contain:

- (a) the name, address, date of birth, and race of the child;
- (b) the name and address of the parent or legal custodian of the child;
- (c) the offense alleged and a reference to the statute which is the basis for the charge; and
- (d) the time and place the alleged offense was committed. In the event the child is alleged to be a runaway, the place where the offense was committed may be stated in the notice as either the child's parent's residence or lawful placement or where the child was found by the officer. In the event the child is alleged to be a habitual truant, the place where the offense was committed may be stated as the school or the place where the child was found by the officer.

Subd. 3. Termination of Parental Rights Matters.

(a) **Generally.** Any termination of parental rights petition shall be filed in the child in need of protection or services file, if one exists.

(b) **Egregious Harm or Abandonment of an Infant.** The county attorney shall file a termination of parental rights petition within thirty (30) days of the local social services agency determining that a child:

(1) has been subjected to egregious harm as defined in Minnesota Statutes, section 260C.007, subdivision 26;

(2) is the sibling of another child who was subjected to egregious harm by the parent; or

(3) is an abandoned infant as defined in Minnesota Statutes, section 260C.301, subdivision 2.

The county attorney need not file a termination of parental rights petition if the county attorney determines and files with the court an affidavit that a transfer of permanent legal and physical custody to a relative is in the best interests of the child or there is a compelling reason documented by the local social services agency that filing a termination of parental rights petition is not in the best interests of the child.

Subd. 4. Permanent Placement Matters.

(a) **Generally.** Any permanent placement petition shall be filed in the child in need of protection or services file, if one exists.

(b) **Filing by Whom.** The county attorney shall file a permanent placement petition in juvenile court to determine the permanent placement of a child. Any party may also file a petition to establish the basis for a permanent placement order. A party, including a guardian ad litem for the child, shall file a permanent placement petition if the party disagrees with the permanent placement determination set forth in the petitions filed by other parties.

Advisory Committee Comment

If a child in need of protection or services matter is pending at the time a termination of parental rights matter is filed regarding the same child, the termination petition should be filed in the same file as the child in need of protection or services matter.

Rule 70.02 Content

Subdivision 1. Generally. Every petition filed with the court in a juvenile protection matter, or a sworn affidavit accompanying such petition, shall contain:

(a) a statement of facts that, if proven, would support the relief requested in the petition;

(b) the child's name, date of birth, race, gender, and current address unless stating the address would endanger the child or seriously risk disruption of the current placement;

(c) the names, race, date of birth, residence, and post office addresses of the child's parents when known;

(d) the name, residence, and post office address of the child's legal custodian, the person having custody or control of the child, or the nearest known relative if no parent or legal custodian can be found;

(e) the name, residence, and post office address of the spouse of the child;

(f) the statutory grounds on which the petition is based, together with a recitation of the relevant portion of the subdivision(s);

(g) a statement regarding the applicability of the Indian Child Welfare Act; and

(h) the names and addresses of the participants identified in Rule 58.

Subd. 2. Child in Need of Protection or Services Matters.

(a) **Petitions Drafted and Filed by County Attorney.** A child in need of protection or services matter is defined in Minnesota Statutes, section 260C.007, subdivision 4. All child in need of protection or services petitions shall be drafted and filed under the

supervision of the county attorney, except as provided in Minnesota Statutes, section 260C.141, subdivision 1, and subdivision 2(b) of this rule.

(b) Petitions Drafted and Filed By Others.

(1) **Petition Form.** A child in need of protection or services petition filed by an individual who is not a county attorney or an agent of the commissioner of human services shall be filed on a form developed by the state court administrator. Copies of the form shall be available from the court administrator in each county.

(2) **Additional Content Requirements for Petitions Not Filed by County Attorney.** In addition to the content requirements set forth in subdivision 1, a petition filed by an individual who is not a county attorney or an agent of the commissioner of human services shall contain:

(i) a statement that the petitioner has reported the circumstances underlying the petition to the local social services agency and that protection or services were not provided to the child;

(ii) a statement, including court file numbers where possible, of pending juvenile or family court proceedings and prior or present juvenile or family court orders relating to the child; and

(iii) a statement regarding the relationship of the petitioner to the child and to any other parties.

(3) **Review by Court Administrator.** Any petition filed by an individual who is not a county attorney or an agent of the commissioner of human services shall be reviewed by the court administrator before it is filed to determine whether it is complete. The court administrator may reject the petition as incomplete if it does not indicate that the petitioner has contacted the local social services agency.

(4) **Court Review.** Within three (3) days of the date a petition is filed by a person who is not a county attorney or an agent of the commissioner of human services, the court shall review the petition. If the court determines that the petition and attachments establish a prima facie case that a child in need of protection or services matter exists and that the child is the subject of that matter, the court shall set the matter for an admit/deny hearing pursuant to Rule 71 and shall direct notice pursuant to Rule 69. The court shall not allow a petition to proceed if it appears that the sole purpose of the petition is to modify custody between the parents or if it fails to set forth the information required in subdivisions 1 and 2(b) of this rule.

(c) Petition Based Upon Prima Facie Case.

(1) **When Required.** In addition to the content requirements of subdivisions 1 and 2(b), a petition establishing a prima facie case that a child in need of protection or services matter exists and that the child is the subject of that matter shall be filed with the court:

(i) before the court may issue an ex parte order for emergency protective care pursuant to Rule 65; or

(ii) before an emergency protective care hearing is held pursuant to Rule 67 for a child taken into emergency protective care without a court order.

(2) **Manner.** The facts establishing a prima facie case that a child in need of protection or services 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 stating this fact shall be made by the court on the petition. The testimony shall be recorded pursuant to Rule 47.

Subd. 3. Termination of Parental Rights Matters.

(a) **Generally.** A termination of parental rights matter shall be entitled "Petition to Terminate Parental Rights" and shall conform to the requirements of Minnesota Statutes, section 260C.141.

(b) **Petitions Seeking Alternative Permanent Placement Relief.** In addition to the content requirements set forth in subdivision 1, any termination of parental rights

petition may seek alternative permanent placement relief, including transfer of permanent legal and physical custody to a relative or placement of the child in long-term foster care. A petition seeking alternative permanent placement relief shall identify which permanent placement option the petitioner believes is in the best interests of the child. A petition may seek separate permanent placement relief for each child named as a subject of the petition as long as the petition identifies which option(s) is sought for each child and why that option(s) is in the best interests of the child. At the admit/deny hearing on a petition that seeks alternative relief, each party shall identify on the record the permanent placement option that is in the best interests of the child.

Subd. 4. Permanent Placement Matters.

(a) **Generally.** Every petition in a permanent placement matter, or a sworn affidavit accompanying such petition, shall contain a title denoting the permanency relief sought:

(1) A transfer of permanent legal and physical custody matter shall be entitled "Juvenile Protection Petition to Transfer Permanent Legal and Physical Custody" and shall conform to the requirements of Minnesota Statutes, section 518.156 and, in cases where the local social services agency is the petitioner, the petition shall identify:

(i) the local social services agency as petitioner; and

(ii) the proposed relative custodian as co-petitioner when the local social services agency petitions on behalf of the proposed relative custodian.

(2) A request for long-term foster care shall be entitled "Juvenile Protection Petition for Long-term Foster Care."

(3) A request for foster care for a specified period of time for a child adjudicated to be in need of protection or services solely on the basis of the child's behavior shall be entitled "Juvenile Protection Petition for Foster Care for a Specific Period of Time."

(b) **Petitions Seeking Alternative Permanent Placement Relief.** Any permanent placement petition may seek alternative permanent placement relief, including termination of parental rights, transfer of permanent legal and physical custody to a relative, or placement of the child in long-term foster care. A petition seeking alternative permanent placement relief shall identify which permanent placement option the petitioner believes is in the best interests of the child. A petition may seek separate permanent placement relief for each child named as a subject of the petition as long as the petition identifies which option(s) is sought for each child and why that option is in the best interests of the child. At the admit/deny hearing on a petition that seeks alternative relief, each party shall identify on the record the permanent placement option that is in the best interests of the child.

Subd. 5. Out of State Party. If a party resides out of state, or if there is likelihood of interstate litigation, the petition or an attached affidavit shall include a statement regarding the whereabouts of the party and any other information required by the Uniform Child Custody Jurisdiction and Enforcement Act, Minnesota Statutes, section 518D.101 to section 518D.317.

Subd. 6. Disclosure of Address - Endangerment. If there is reason to believe that an individual may be endangered by disclosure of an address required to be provided pursuant to this rule, that address may be provided to the court in a separate informational statement and shall not be accessible to the public or to the parties. Upon notice and motion, the court may disclose the address as it deems appropriate.

Rule 70.03 Verification

A petition shall be verified by a person having knowledge of the facts and may be verified on information and belief.

Rule 70.04 Amendment

Subdivision 1. Prior to Trial. The petition may be amended at any time prior to the commencement of the trial, including, in a child in need of protection or services matter, adding a child as the subject matter of the petition. The petitioner shall provide notice of the amendment to all parties and participants. When the petition is amended, the court shall grant all other parties sufficient time to respond to the amendment.

Subd. 2. After Trial Begins. The petition may be amended after the trial has commenced if the court finds that the amendment does not prejudice a party and all parties are given sufficient time to respond to the proposed amendment. Upon receipt of approval from the court, the petitioner shall provide notice of the proposed amendment to all parties and participants.

Rule 70.05 Timing

If a child is in emergency protective care pursuant to Rule 65, the petition shall be filed at or prior to the time of the emergency protective care hearing held pursuant to Rule 67.

Advisory Committee Comment

Minnesota Statutes, section 260C.143, provides that a peace officer or school attendance officer may issue a notice to a child to appear in court and file the notice with the juvenile court.

RULE 71. ADMIT/DENY HEARING**Rule 71.01 Generally**

An admit/deny hearing is a hearing at which the statutory grounds set forth in the petition are admitted or denied pursuant to Rule 72.

Rule 71.02 Timing**Subdivision 1. Child in Placement.**

(a) **Generally.** When the child is placed out of the child's home by court order, an admit/deny hearing shall be held within ten (10) days of the date of the emergency protective care hearing. Upon agreement of the parties, an admit/deny hearing may be combined with an emergency protective care hearing held pursuant to Rule 67.

(b) **Termination of Parental Rights Matters.** In a termination of parental rights matter the admit/deny hearing shall be held not less than ten (10) days after service is complete upon the party.

(c) **Permanent Placement Matters.** In a permanent placement matter the admit/deny hearing shall be held at least twenty (20) days prior to the date set for the permanent placement hearing held pursuant to Rule 77.

Subd. 2. Child Not in Placement.

(a) **Generally.** When the child is not placed outside the child's home by court order, an admit/deny hearing shall be held no sooner than five (5) days and no later than twenty (20) days after the parties have been served with the petition.

(b) **Habitual Truant, Runaway, and Prostitution Matters.** In matters where the sole allegation is that the child is a habitual truant, runaway, or engaged in prostitution and the child is not in placement, an admit/deny hearing shall be commenced within a reasonable time after service upon the child.

Subd. 3. Possession of Petition. The parties have the right to have a copy of the petition at least three (3) days before the admit/deny hearing.

Rule 71.03 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 current address of the child who is the subject of the matter, unless stating the address would endanger the child or seriously risk disruption of the current placement;

(b) inquire whether the child is an Indian child and, if so, determine whether the Indian child's tribe has been notified;

(c) determine whether all parties are present and identify those present for the record;

(d) advise any child and the child's parent or legal custodian who appears in court and is not represented by counsel of the right to representation pursuant to Rule 61;

(e) determine whether notice requirements have been met and, if not, whether the affected person waives notice;

(f) if the child who is a party or the child's parent or legal custodian appears without counsel, explain basic trial rights;

(g) determine whether the child and the child's parent or legal custodian understand the statutory grounds and the factual allegations set forth in the petition and, if not, provide an explanation; and

(h) explain the purpose of the hearing and the possible transfer of custody of the child from the parent or legal custodian to another, when such transfer is permitted by law and the permanency requirements of Minnesota Statutes, section 260C.201, subdivision 11.

Subd. 2. Child in Need of Protection or Services Matters. In addition to the initial procedures set forth in subdivision 1, in each child in need of protection or services matter the court shall also advise all persons present that if the petition is proven and the child is not returned home, a hearing to determine the permanent placement of the child will be held:

(a) within six (6) months of the date of the child's out-of-home placement if the child was under eight (8) years of age at the time of the filing of the petition; or

(b) within twelve (12) months of the date of the child's out-of-home placement if the child was eight (8) years of age or older at the time of the filing of the petition.

Subd. 3. Termination of Parental Rights Matters. In each termination of parental rights matter, after completing the initial inquiries set forth in subdivision 1 the court shall determine whether the petition states a prima facie case in support of termination of parental rights under the statutory grounds stated in the petition. If the court determines that the petition states a prima facie case in support of termination of parental rights, the court shall proceed pursuant to Rule 72. If the court determines that the petition fails to state a prima facie case in support of termination of parental rights, the court shall:

(a) return the child to the care of the parent or legal custodian;

(b) give the petitioner ten (10) days to file an amended petition or supplementary information if the petitioner represents there are additional facts which, if presented to the court, would establish a prima facie case in support of termination of parental rights;

(c) give the petitioner ten (10) days to file a child in need of protection or services petition; or

(d) dismiss the petition.

Subd. 4. Permanent Placement Matters. In each permanent placement matter, after completing the initial inquiries set forth in subdivision 1, the court shall review the facts set forth in the petition, consider such argument as the parties may make, and determine whether the petition states a prima facie case in support of one or more of the permanent placement options. If the court determines that the petition states a prima facie case, the court shall proceed pursuant to Rule 72. If the court determines that the petition fails to state a prima facie case, the court may:

(a) return the child to the care of the parent;

(b) give the petitioner ten (10) days to file an amended petition or supplementary information if the petitioner represents there are additional facts which, if presented to the court, would establish a prima facie case; or

(c) dismiss the petition.

Subd. 5. Motions. The court shall hear any motions, made pursuant to Rule 51, addressed to the sufficiency of the petition or jurisdiction of the court without requiring any person to admit or deny the statutory grounds set forth in the petition prior to making a finding on the motion.

Advisory Committee Comment

Rule 71.03, subdivision 2, is consistent with Minnesota Statutes, section 260C.201, subdivision 11, which provides that a permanent placement determination hearing must be held within six (6) months of a child's removal from the home if the child is under eight (8) years of age at the time the petition is filed.

RULE 72. ADMISSION OR DENIAL

Rule 72.01 Generally

Subdivision 1. Parent or Legal Custodian.

(a) **Generally.** Unless the child's parent or legal custodian is the petitioner, a parent who is a party or a legal custodian shall admit or deny the statutory grounds set forth in the petition or remain silent. If the parent or legal custodian denies the statutory grounds set forth in the petition or remains silent, or if the court refuses to accept an admission, the court shall enter a denial of the petition on the record.

(b) **Termination of Parental Rights Matters.** In a termination of parental rights matter, only the parents of the child are required to admit or deny the petition. A party who is not required to admit or deny the petition may object to the admission if that party has filed a petition pursuant to Rule 70.

(c) **Permanent Placement Matters.** In a permanent placement matter:

(1) only the legal custodian of the child is required to admit or deny the petition. A party who is not required to admit or deny the petition may object to the entry of the proposed permanent placement order if that party has filed a petition pursuant to Rule 70.

(2) When the county attorney petitions for transfer of permanent legal and physical custody on behalf of a relative who is not represented by counsel, the court may not enter an order granting the transfer of custody unless there is testimony from the proposed custodian establishing that the proposed custodian understands:

(i) the legal consequences of a transfer of permanent legal and physical custody;

(ii) the nature and amount of financial support and services that will be available to help care for the child;

(iii) how the custody order can be modified; and

(iv) any other permanent placement options available for the subject child.

Subd. 2. Child.

(a) **Generally.** The child shall not admit or deny the petition.

(b) **Habitual Truant, Runaway, and Prostitution Matters.** In cases where the child is alleged to be a habitual truant, a runaway, or engaged in prostitution, the child shall admit or deny the statutory grounds set forth in the petition or remain silent.

Subd. 3. Contested Petition. Any party has the right to contest the basis of a petition filed by an individual who is not a county attorney or an agent of the commissioner of human services.

Rule 72.02 Denial

Subdivision 1. Denial Without Appearance. A written denial or a denial on the record of the statutory grounds set forth in 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 by any party is entered, the court shall schedule further proceedings pursuant to Rule 73 or Rule 74.

Rule 72.03 Admission

Subdivision 1. Admission Under Oath. Any admission must be made under oath.

Subd. 2. Admission Without Appearance. Upon approval of the court, a written admission of the statutory grounds set forth in the petition, made under oath, may be entered by counsel without personal appearance of the person represented by counsel.

Subd. 3. Questioning of Person Making Admission.

(a) **Generally.** Before accepting an admission the court shall determine on the record or by written document signed by the person admitting and the person's counsel, if represented, whether:

(1) the person admitting acknowledges an understanding of:

- (i) the nature of the statutory grounds set forth in the petition;
- (ii) if unrepresented, the right to representation pursuant to Rule 61;
- (iii) the right to trial;
- (iv) the right to testify; and
- (v) the right to subpoena witnesses; and

(2) the person admitting acknowledges an understanding that the facts being admitted establish the statutory grounds set forth in the petition.

(b) **Child in Need of Protection or Services Matters, and Habitual Truant, Runaway, and Prostitution Matters.** In addition to the questions set forth in subdivision 3(a), before accepting an admission in a child in need of protection or services matter or a matter alleging a child to be a habitual truant, a runaway, or engaged in prostitution, the court shall also determine on the record or by written document signed by the person admitting and the person's counsel, if represented, the following:

(1) whether the person admitting acknowledges an understanding that a possible effect of a finding that the statutory grounds are proved may be the transfer of legal custody of the child to another or termination of parental rights to the child; and

(2) whether the person admitting acknowledges an understanding that, if the child is not returned home, a hearing to determine the permanent placement of the child will be held within six (6) months of the date of the child's out-of-home placement if the child was under eight (8) years of age at the time of the filing of the petition, or within twelve (12) months of the date of the child's out-of-home placement if the child was eight (8) years or older at the time of the filing of the petition.

Subd. 4. Basis for Admission. The court shall refuse to accept an admission unless there is a factual basis for the admission.

(a) **Full Admission.** A party may admit all of the statutory grounds set forth in the petition.

(b) **Partial Admission.** Pursuant to a Rule 55 settlement agreement, a person may admit some, but not all, of the statutory grounds set forth in the petition.

Subd. 5. 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. 6. Acceptance or Non-Acceptance of Admission. At the time of the admission, the court shall make a finding that:

(a) the admission has been accepted and the statutory grounds admitted have been proved;

(b) the admission has been conditionally accepted pending the court's approval of a settlement agreement pursuant to Rule 55; or

(c) the admission has not been accepted.

Subd. 7. Future Proceedings. If the court makes a finding that the admission is accepted and the statutory grounds admitted are proved, or that the admission is conditionally accepted pending the court's approval of a settlement agreement pursuant to Rule 55, the court shall enter an order with respect to adjudication pursuant to Rule 75 and proceed to disposition. If the court makes a finding that the admission has not been accepted, the court shall schedule further proceedings pursuant to Rule 73 or Rule 74.

RULE 73. PRETRIAL CONFERENCE

Rule 73.01 Timing

The court may convene a pretrial conference on its own motion or upon the motion of any party. Any pretrial conference shall take place at least ten (10) days prior to trial.

Rule 73.02 Purpose

The purposes of a pretrial conference shall be to:

(a) determine whether a settlement of any or all of the issues has occurred or is possible;

(b) determine whether all parties have been served and, if not, review the efforts that have taken place to date to serve all parties;

(c) advise any child or the child's parent or legal custodian who appears in court and is unrepresented of the right to representation pursuant to Rule 61. If counsel is appointed at the pretrial conference, the conference shall be reconvened at a later date;

(d) determine whether the child shall be present and testify at trial and, if so, under what circumstances;

(e) identify any unresolved discovery matters;

(f) resolve any pending pretrial motions;

(g) identify and narrow issues of law and fact for trial, including identification of:

(1) the factual allegations admitted or denied;

(2) the statutory grounds admitted or denied;

(3) any stipulations to foundation and relevance of documents; and

(4) any other stipulations, admissions, or denials;

(h) exchange witness lists and a brief summary of each witness' testimony;

(i) exchange exhibit lists;

(j) confirm the trial date and estimate the length of trial; and

(k) determine any other relevant issues.

The pretrial order shall specify all factual allegations and statutory grounds admitted and denied. From the date of the pretrial conference through the date of trial, the parties shall have a continuing obligation to update information provided during the pretrial conference.

Advisory Committee Comment

Rule 73.02(d) addresses the need to determine whether the child will testify. The intent of the rule is to provide that an order protecting the child from testifying or placing

conditions on the child's testimony can only be made after notice of motion and a hearing. The Committee intends that any such motion be heard and resolved at the pretrial conference.

RULE 74. TRIAL

Rule 74.01 Generally

A trial is a hearing to determine whether the statutory grounds set forth in the petition are or are not proved.

Rule 74.02 Timing

Subdivision 1. Commencement of Trial.

(a) **Child in Need of Protection or Services Matters.** A trial regarding a child in need of protection or services matter shall commence within sixty (60) days from the date of the emergency protective care hearing or the date of the admit/deny hearing, whichever is earlier.

(b) **Permanent Placement Matters.** A trial regarding a permanent placement matter not involving a termination of parental rights matter shall commence on or before the three hundred and sixty-fifth (365th) day after the child is ordered out of the care of the parent. In the case of a child under eight (8) years of age at the time the child in need of protection or services petition is filed, a permanent placement determination hearing shall commence on or before the one hundred and eightieth (180th) day after the child is ordered out of the care of the parent. If the local social services agency demonstrates at this hearing that the parent is not complying with the case plan or visiting the child and that the permanency plan for the child is transfer of permanent legal and physical custody to a relative or termination of parental rights, a petition supporting the plan shall be filed in juvenile court within thirty (30) days of the hearing under this paragraph and a trial on the petition shall be held within thirty (30) days of the filing of a petition in the case of a transfer of legal custody or within ninety (90) days in the case of a petition for termination of parental rights.

(c) **Termination of Parental Rights Matters.** A trial regarding a termination of parental rights matter shall commence within ninety (90) days from the date of the admit/deny hearing.

(d) **Simultaneous Criminal Proceedings.** If criminal charges have been filed against a parent arising out of conduct alleged to constitute egregious harm, the county attorney shall determine whether the criminal matter or the juvenile court matter should proceed to trial first, consistent with the best interests of the child and subject to the defendant's right to a speedy trial.

(e) **Sufficient Time.** The court shall set aside sufficient time to avoid interruption of the trial.

Subd. 2. Continuance.

(a) **Generally.** The court may, either on its own motion or upon motion of a party or the county attorney, continue a trial to a later date upon written findings or oral findings made on the record that a continuance is necessary for the protection of the child, for accumulation or presentation of evidence or witnesses, to protect the rights of a party, or for other good cause shown, so long as the permanency time requirements set forth in these rules are not delayed.

(b) **Child in Need of Protection or Services Matters and Termination of Parental Right Matters.** In child in need of protection or services matters and termination of parental rights matters, a trial may not be continued or adjourned for more than one (1) week unless the court makes specific findings that the continuance or adjournment is in the best interests of the child. In any event, the trial shall be commenced and completed within ninety (90) days of the denial of the statutory grounds.

Subd. 3. 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 shall be commenced within thirty (30) days of the order.

Rule 74.03 Procedure

Subdivision 1. Initial Procedure. At the beginning of the trial the court shall on the record:

(a) verify the name, age, race, and current address of the child who is the subject of the matter, unless stating the address would endanger the child or seriously risk disruption of the current placement;

(b) inquire whether the child is an Indian child and, if so, determine whether the Indian child's tribe has been notified;

(c) determine whether all parties are present and identify those present for the record;

(d) determine whether any child or the child's parent or legal custodian is present without counsel and, if so, explain the right to representation pursuant to Rule 61;

(e) determine whether notice requirements have been met and, if not, whether the affected person waives notice;

(f) if the child who is a party or the child's parent or legal custodian appears without counsel, explain basic trial rights;

(g) determine whether the child and the child's parent or legal custodian understand the statutory grounds and the factual allegations set forth in the petition and, if not, provide an explanation; and

(h) explain the purpose of the hearing and possible transfer of custody of the child from the parent or legal custodian to another when such transfer is permitted by law and the permanency requirements of Minnesota Statutes, section 260C.201, subdivision 11.

Subd. 2. Conduct and Procedure.

(a) **Trial Rights.** The parties and the county attorney shall have the right to:

(1) present evidence;

(2) present witnesses;

(3) cross-examine witnesses;

(4) present arguments in support of or against the statutory grounds set forth in the petition; and

(5) ask the court to order that witnesses be sequestered.

(b) **Trial Procedure.** The trial shall proceed as follows:

(1) the party that drafted and filed the petition pursuant to Rule 70 may make an opening statement confining the statement to the facts expected to be proved;

(2) the other parties, in order determined by the court, may make an opening statement or may make a statement immediately before offering evidence, and the statement shall be confined to the facts expected to be proved;

(3) the party that drafted and filed the petition pursuant to Rule 70 shall offer evidence in support of the petition;

(4) the other parties, in order determined by the court, may offer evidence;

(5) the party that drafted and filed the petition pursuant to Rule 70 may offer evidence in rebuttal;

(6) the other parties, in order determined by the court, may offer evidence in rebuttal;

(7) when evidence is presented, other parties may, in order determined by the court, cross-examine witnesses;

(8) at the conclusion of the evidence the parties, other than the party that drafted and filed the petition pursuant to Rule 70, in order determined by the court, may make a closing statement;

(9) the party that drafted and filed the petition pursuant to Rule 70 may make a closing statement; and

(10) if written argument is to be submitted, it shall be submitted within fifteen (15) days of the conclusion of testimony, and the trial is not considered completed until the time for written arguments to be submitted has expired.

Rule 74.04 Standard of Proof

Subdivision 1. Generally. To be proved at trial, the statutory grounds set forth in the petition must be proved by clear and convincing evidence.

Subd. 2. Indian Child.

(a) **Foster Care Placement.** In the case of an Indian child, no foster care placement may be ordered in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, as defined in Minnesota Rules parts 9560.0221 and 9560.0500 to 9560.0670, that the continued custody of the child by the parent or legal custodian or Indian custodian is likely to result in serious emotional or physical damage to the child.

(b) **Termination of Parental Rights.** In the case of an Indian child, no termination of parental rights may be ordered in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, as defined in Minnesota Rules parts 9560.0221 and 9560.0500 to 9560.0670, that the continued custody of the child by the parent or legal custodian or Indian custodian is likely to result in serious emotional or physical damage to the child.

Advisory Committee Comment

In In Re the Matter of M.S.S., 465 N.W.2d 412 (Minn. Ct. App. 1991), the court held that the parental rights to an Indian child may not be terminated unless the county proves beyond a reasonable doubt that it has complied with section 1912(f) of the Indian Child Welfare Act, 25 U.S.C. section 1901 et. seq., requiring the county to make active efforts to prevent or avoid placement.

Rule 74.05 Decision

Subdivision 1. Generally. Within fifteen (15) days of the conclusion of the trial, the court shall make a finding and issue an order regarding whether the statutory grounds set forth in the petition have or have not been proved. For good cause, the court may extend this period for an additional fifteen (15) days. The court shall dismiss the petition if the statutory grounds have not been proved.

Subd. 2. Child in Need of Protection or Services Matters and Habitual Truant, Runaway, and Prostitution Matters. The court shall issue its findings and order concerning adjudication within fifteen (15) days of the date that the trial is completed. If written argument is to be submitted, such argument must be submitted within fifteen (15) days of the conclusion of testimony. The trial is not considered completed until written arguments, if any, are submitted or the time for submission of written arguments has expired. If the court makes a finding that the statutory grounds set forth in the petition have been proved, the court shall schedule the matter for further proceedings pursuant to Rule 75. The findings and order shall be filed with the court administrator who shall proceed pursuant to Rule 46.

Subd. 3. Termination of Parental Rights Matters.

(a) **Generally.** Within fifteen (15) days of the conclusion of the trial, the court shall make a finding that the statutory grounds set forth in the petition have or have not been proved. If the court finds that the statutory grounds set forth in the petition are not proved, the court shall dismiss the petition or determine that the child is in need of

protection or services and schedule further proceedings pursuant to Rule 75. If the court finds that the statutory grounds set forth in the petition are proved, the court shall terminate parental rights. The findings and order shall be filed with the court administrator who shall proceed pursuant to Rule 46.

(b) **Particularized Findings.** The court may not enter an order terminating parental rights unless it finds that the statutory grounds have been proved by the applicable standard of proof and one of the following:

(1) **Reasonable Efforts and Remedial Services.** In any termination of parental rights matter, the court shall make specific findings regarding the nature and extent of efforts made by the social services agency to rehabilitate the parent and reunite the family, including, where applicable, a statement that:

(i) reasonable efforts are not required because the facts demonstrate that the parent has subjected the child to egregious harm;

(ii) the provision of services or further services for the purpose of rehabilitation and reunification is futile and therefore unreasonable under the circumstances; or

(iii) reasonable efforts at reunification are not required as provided under Minnesota Statutes, section 260.012.

(2) **Active Efforts - Indian Child.** In any termination of parental rights proceeding involving an Indian child, the court shall make specific findings that the petitioner has proven beyond a reasonable doubt that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

Subd. 4. Permanent Placement Matters. The court shall issue its decision regarding permanency consistent with Rule 77.

RULE 75. ADJUDICATION

Rule 75.01 Adjudication

If the court makes a finding that the statutory grounds set forth in a petition alleging a child to be in need of protection or services are proved, the court shall:

(a) adjudicate the child as in need of protection or services and proceed to disposition pursuant to Rule 76; or

(b) withhold adjudication of the child pursuant to Rule 75.02.

Rule 75.02 Withholding Adjudication

Subdivision 1. Generally. When it is in the best interests of the child to do so, the court may withhold an adjudication that the child is in need of protection or services. The court may withhold adjudication for a period not to exceed ninety (90) days from the finding that the statutory grounds set forth in the petition have been proved. During the withholding of an adjudication, the court may enter a disposition order pursuant to Rule 76.

Subd. 2. Further Proceedings. At a hearing, which shall be held within ninety (90) days following the court's withholding of adjudication, the court shall either:

(a) dismiss the matter without an adjudication if both the child and the child's legal custodian have complied with the terms of the continuance; or

(b) adjudicate the child in need of protection or services if either the child or the child's legal custodian has not complied with the terms of the continuance. If the court enters an adjudication, the court shall proceed to disposition pursuant to Rule 76.

RULE 76. DISPOSITION

Rule 76.01 Disposition

After an adjudication that a child is in need of protection or services pursuant to Rule 75, the court shall conduct a hearing to determine disposition. Dispositions in regard to review of out-of-home placement matters shall be pursuant to Minnesota Statutes, section 260C.205 and section 127A.47.

Rule 76.02 Timing

To the extent practicable, the court shall conduct a disposition hearing and enter a disposition order the same day it makes a finding that the statutory grounds set forth in the petition have been proved. The disposition order must be issued within ten (10) days of the date the court finds that the statutory grounds set forth in the petition have been proved.

Rule 76.03 Pre-Disposition Reports

Subdivision 1. Investigations and Evaluations. At any time after the court accepts or conditionally accepts an admission pursuant to Rule 72 or finds that the statutory grounds set forth in the petition have been proved, the court may, upon its own motion or the motion of a party or the county attorney, order a pre-disposition report which may include:

- (a) an investigation of the personal and family history and environment of the child;
- (b) medical, psychological, or chemical dependency evaluations of the child and any parent who is a party; and
- (c) information regarding the factors set forth in Rule 76.05.

Subd. 2. Advisory. The court shall advise the persons present in court that a pre-disposition investigation is being ordered, the nature of the evaluations to be included, the date when the reports resulting from the investigation are to be filed with the court, and the right of each party to present opposing evidence and reports.

Subd. 3. Filing and Inspection of Pre-Disposition Reports. The person who intends to offer the pre-disposition report shall file the report with the court and serve the report on all parties at least forty-eight (48) hours prior to the time scheduled for the hearing. When the child or the child's parent or legal custodian is not represented by counsel, the court may limit the inspection of reports by the child or the child's parent and legal custodian if the court determines it is in the best interests of the child. Any party or the person making the pre-disposition report may by motion request a protective order limiting the release of confidential or sensitive information contained in the report.

Subd. 4. Discussion of Contents of Reports. The person making the pre-disposition report may discuss the contents of the report with all parties and the county attorney.

Subd. 5. Discussion of Content of Report - Limitation by Court. The court may upon a showing of good cause limit the extent of the discussion of the contents of the pre-disposition report with the parties 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 written or on-the-record motion of a party, the county attorney, or the person making the pre-disposition report.

Rule 76.04 Procedure; Evidence

Disposition hearings shall be conducted in an informal manner designed to facilitate the opportunity for all parties to be heard.

The court may admit any evidence, including reliable hearsay and opinion evidence, which is relevant to the disposition of the matter. Privileged communications may be admitted in accordance with Minnesota Statutes, section 626.556, subdivision 8.

Rule 76.05 Disposition Order

Subdivision 1. Findings. The disposition order shall contain written findings of fact to support the disposition ordered and shall also set forth in writing the following information:

- (a) a statement explaining how the disposition serves the best interests of the child;
- (b) a statement of all alternative dispositions considered by the court and why such dispositions are not appropriate for the child;
- (c) if the disposition is out-of-home placement, how the court's disposition will serve the child's needs in placement. Among the factors to be considered in determining the needs of the child are:
 - (1) the child's current functioning and behaviors;
 - (2) the medical, educational, and developmental needs of the child;
 - (3) the child's history and past experience;
 - (4) the child's religious and cultural needs;
 - (5) the child's connection with a community, school, and faith community;
 - (6) the child's interests and talents;
 - (7) the child's relationship to current caretakers, parents, siblings, and relatives;
 - (8) the reasonable preference of the child, if the court deems the child to be of sufficient age to express a preference; and
 - (9) a brief description of the efforts made to prevent or eliminate the need for removal of the child from home and to reunify the family after removal, and why further efforts could not have prevented or eliminated the necessity of removal.

The court may authorize or continue an award of legal custody to the local social services agency despite a finding that the agency's preventive or reunification efforts have not been reasonable if the court finds that further preventive or reunification efforts could not permit the child to safely remain at home.

Subd. 2. Content.

(a) **Mandatory Provisions.** The court shall enter an order making one or more of the following dispositions for the child:

- (1) place the child under the protective supervision of the local social services agency or child-placing agency in the child's own home under conditions directed to correction of the child's need for protection or services;
- (2) transfer legal custody to a child-placing agency or the local social services agency for placement in foster care;
- (3) in the case of a child who needs special treatment and care for reasons of physical or mental health when the child's parent or legal custodian is unable to provide the treatment or care, order that the treatment and care be provided; or
- (4) allow a child 16 years old or older to live independently under appropriate supervision, if the court determines that the child has sufficient maturity and judgment, and the local social services agency after consultation with the court has specifically authorized this alternative.

(b) **Additional Provisions.** As part of the disposition order the court shall also:

- (1) set reasonable rules for supervised or unsupervised visitation for the child's parent or legal custodian and for an individual who is related to the child by blood, marriage or adoption or is an important friend with whom the child has resided or had significant contact;

(2) review the case plan, make modifications supported by the evidence, and incorporate the plan into the disposition order; and

(3) set the date and time for the permanency placement determination hearing pursuant to Rule 77.

(c) **Habitual Truant, Runaway, and Prostitution Matters.** If the child is adjudicated in need of protection or services because the child is a habitual truant, runaway, or engaged in prostitution, the court may order any of the following dispositions in addition to or as alternatives to the dispositions ordered under subdivisions (a) and (b):

(1) counseling for the child or the child's parent or legal custodian;

(2) place the child under the supervision of a probation officer or other suitable person in the child's own home under conditions prescribed by the court, including reasonable rules for the child's conduct and the conduct of the parent or legal custodian designed for the physical, mental, and moral well-being and behavior of the child;

(3) with the consent of the commissioner of corrections, place the child in a group foster care facility that is under the commissioner's management and supervision;

(4) subject to the court's supervision, transfer legal custody of the child to one of the following:

(i) a reputable person of good moral character; or

(ii) a county probation officer for placement in a group foster home established under the direction of the juvenile court and licensed pursuant to Minnesota Statutes, section 241.021;

(5) require the child to pay a fine of up to \$100, to be paid in a manner that will not impose undue financial hardship upon the child;

(6) require the child to participate in a community service project;

(7) order the child to undergo a chemical dependency evaluation and, if warranted by the evaluation, order participation by the child in a drug awareness program or an inpatient or outpatient chemical dependency treatment program;

(8) order the commissioner of public safety to cancel the child's driver's license or permit or, for a child who does not have a driver's license or permit, order a denial of driving privileges for any period up to the child's 18th birthday; or

(9) order the child's parent or legal custodian to deliver the child to school at the beginning of each school day for a period of time specified by the court.

Rule 76.06 Hearings

Subdivision 1. Timing. When disposition is an award of legal custody to the local social services agency, the court shall review the disposition in court at least every ninety (90) days. Any party or the county attorney may request a review hearing before ninety (90) days. When the disposition is protective supervision, the court shall review the disposition in court at least every six (6) months from the date of disposition.

Subd. 2. Procedure. Any party or the county attorney may seek modification of a disposition order by motion made pursuant to Rule 51. The motion may be heard at the scheduled review hearing or at an earlier date or may be considered by the court without hearing if no party objects.

Subd. 3. Modification of Disposition. The court, on its own motion or that of any party, may modify the disposition when all parties agree the modification is in the best interests of the child and:

(a) a change of circumstances requires a change in the disposition; or

(b) the original disposition is inappropriate.

If a party objects to a proposed modification, or if the child does not have a guardian ad litem at the time the motion is made, the court shall schedule a hearing for the next available date.

Subd. 4. Notice. Notice of the review hearing shall be given to all parties and participants.

Subd. 5. Procedure. Review hearings shall be conducted pursuant to Rule 76.04.

Subd. 6. Findings and Order. In the event the disposition is modified, the court shall issue a disposition order in accordance with Rule 76.05.

RULE 77. PERMANENT PLACEMENT MATTERS

Rule 77.01 Timing and Purpose

Subdivision 1. Timing. The court in its disposition order shall set the date or deadline for the permanent placement determination hearing. Not later than when the court sets the date or deadline for the permanent placement determination hearing, the court shall notify the parties and participants of the following requirements of Minnesota Statutes, section 260C.201, subdivision 11:

(a) **Requirement of Six (6) Month Hearing for Child Under Eight (8) Years of Age.** For a child under eight (8) years of age at the time a petition is filed alleging the child to be in need of protection or services, unless a termination of parental rights petition has been filed, the court shall conduct a hearing to determine the permanent status of a child not later than six (6) months after the child is placed out of the home of the parent.

(b) **Requirement of Twelve (12) Month Hearing for Child Eight (8) Years of Age or Older.** For a child eight (8) years of age or older at the time a petition is filed alleging the child to be in need of protection or services, unless a termination of parental rights petition has been filed, the court shall conduct a hearing to determine the permanent status of a child not later than twelve (12) months after the child is placed out of the home of the parent.

Subd. 2. Purpose.

(a) **Child Eight (8) Years of Age and Older.** The purpose of the permanent placement determination hearing is to review the progress of the case and the case plan, including the services provided by the local social services agency. The court shall determine whether the child shall be returned home or, if not, order permanent placement consistent with the child's best interests.

(b) **Child Under Eight (8) Years of Age.** The court shall determine whether the child shall be returned home or, if not, determine whether

(1) the parents or legal custodian have maintained regular contact with the child, the parents are complying with the court-ordered case plan, and the child would benefit from continuing this relationship;

(2) grounds for termination of parental rights do not exist; or

(3) the permanent plan for the child is transfer of permanent legal and physical custody to a relative.

Advisory Committee Comment

Rule 77.01 is consistent with Minnesota Statutes, section 260C.201, subdivision 11, which became effective July 1, 1999. The statute provides that a permanent placement determination hearing must be held within six months of a child's removal from the home if the child is under eight (8) years of age at the time the petition is filed or within twelve (12) months of the child's removal if the child is eight (8) years of age or older at the time the petition is filed.

Rule 77.02 Calculating Time Period

The child shall be considered placed out of the care of the parent at the earlier of:

(a) the date the child's placement out of the care of the parent was ordered by the court; or

(b) sixty (60) days after the date on which the child has been voluntarily placed out of the home as a result of a voluntary placement agreement between the parents and the local social services agency.

Rule 77.03 Cumulation of Out-of-Home Placement Time

The time period requiring court review of the permanent status of the child shall be calculated as follows:

(a) during the pendency of a petition alleging a child to be in need of protection or services, all time periods when a child is placed out of the home of the parent are cumulated; and

(b) if a child has been placed out of the home of the parent within the previous five years, the lengths of all prior time periods when the child was placed out of the home within the previous five years. If a child under this clause has been out of the home for twelve (12) months or more, the court, if it is in the best interests of the child and for compelling reasons, may extend the total time the child may continue out of the home under the current petition up to an additional six (6) months before making a permanency determination.

Rule 77.04 Procedures for Permanent Placement Hearing

Subdivision 1. Child Under Eight (8) Years of Age. The following procedures govern a permanent placement determination hearing for a child under the age of eight (8) at the time the petition was filed alleging the child to be in need of protection or services:

(a) **Written Report.** Not later than ten (10) days prior to the hearing, the county attorney must file with the court and serve upon the parties a written report prepared by the local social services agency describing the progress of the case and the case plan including the services provided to the parents. This requirement may be fulfilled by filing either a petition to transfer permanent legal and physical custody of the child to a relative or a petition to terminate parental rights.

(b) **Termination of Parental Rights.**

(1) **Order to Show Cause.** The court may order the local social services agency to show cause why it should not file a termination of parental rights petition. If the court determines that the local social services agency has not shown cause why it should not file a termination of parental rights petition, the court may order the agency to file such a petition within thirty (30) days of the date of the hearing pursuant to Rule 70.01.

(2) **Agency Determination.** If the permanent placement plan is to terminate parental rights, unless the social services agency has already filed a petition to terminate parental rights, a petition supporting such a plan shall be filed within thirty (30) days of the hearing and the case will proceed according to Rule 70.01.

(c) **Transfer of Permanent Legal and Physical Custody to a Relative.** If the court determines that the appropriate permanent placement plan for the child is transfer of permanent legal and physical custody to a relative, the court shall order such a petition be filed within thirty (30) days of the date of the hearing and a trial on the matter held within 30 days of the filing of the petition.

(d) **Extension of Time.** If the court determines that the parent is making sufficient progress on the case plan and is visiting the child, or if the court determines the local social services agency has not provided appropriate services to the parent, the court may extend the time for a permanency determination for up to a total of six (6) additional months.

Subd. 2. Child Eight (8) Years of Age or Older or a Child Under Age Eight (8) for Whom Permanency Has Not Been Ordered. Unless the local social services agency recommends return of the child to the custodial parent or parents, not later than thirty (30) days prior to this hearing, the local social services agency shall file pleadings to establish the basis of the juvenile court to order permanent placement of the child according to Rule 77.05.

Rule 77.05 Permanent Placement Order

Subdivision 1. Timing. Within fifteen (15) days of the close of the permanent placement hearing the court shall issue a permanent placement order. The court may extend this period for an additional fifteen (15) days if the court finds that an extension of time is required in the interests of justice and the best interests of the child. The order shall be filed with the court administrator who shall proceed pursuant to Rule 46.

Subd. 2. Order.

(a) **Return Child Home.** If the court orders the child to be returned to the care of a parent, the court may enter or continue a prior finding that the child is in need of protection or services and may order conditions directed to correction of the child's need for protection or services.

(b) **Transfer of Permanent Legal and Physical Custody.** If the court transfers permanent legal and physical custody to a relative, juvenile court jurisdiction is terminated unless specifically retained by the court in its order. The court shall include an order directing the juvenile court administrator to file the order with the family court. Any further proceedings shall be brought in the family court pursuant to Minnesota Statutes, section 518.18. Notice of any family court proceedings shall be provided to the local social services agency.

(c) **Termination of Parental Rights.** Unless the local social services agency has already filed a termination of parental rights petition, the court may order such a petition be filed pursuant to Rule 70:01.

(d) **Long-term Foster Care.** If the court orders long-term foster care, the court shall order such further review as it determines appropriate or in the best interests of the child. If the long-term foster care placement disrupts, the local social services agency shall return to court within ten (10) days for further review of the permanent status of the child. An order for long-term foster care is reviewable upon motion and a showing by the parent of a substantial change in circumstances such that the parent could provide appropriate care of the child and that removal of the child from the child's permanent placement and return to the parent's care would be in the best interests of the child.

(e) **Foster Care for a Specified Period of Time.** If the court orders foster care for a specified period of time, the court shall order review hearings at such time and manner as will serve the child's best interests.

RULE 78. TERMINATION OF PARENTAL RIGHTS MATTERS

Rule 78.01 Birth Certificate

Upon entry of an order terminating parental rights of any person who is identified on the original birth certificate of the child, the court shall serve upon that person at the person's last known address written notice setting forth a statement regarding:

(a) the right of the person at any time to file with the state registrar of vital statistics a consent to disclosure, as defined in Minnesota Statutes, section 144.212, subdivision 11;

(b) the right of the person at any time to file with the state registrar of vital statistics an affidavit stating that the information on the original birth certificate shall not be disclosed as provided in Minnesota Statutes, section 144.1761;

(c) the effect of failure to file either document; and

(d) the right of the parent to file an appeal pursuant to Rule 82.

Rule 78.02 Order for Guardianship

Upon entry of an order terminating parental rights, the court shall order the guardianship and legal and physical custody of the minor child transferred to:

(a) the commissioner of human services;

- (b) a licensed child placing agency; or
- (c) an individual who is willing and capable of assuming the appropriate duties and responsibilities to the child.

Rule 78.03 Further Proceedings.

If the court terminates parental rights, the court shall schedule a review hearing ninety (90) days from the date the termination order is filed with the court, and every ninety (90) days thereafter, for the purpose of reviewing progress of the child towards adoption. The court shall notify the county welfare board, the child's guardian ad litem, the child's attorney, and the child's foster parent or other relative who has asked for notice of the date and time of the hearing.

Rule 78.04 Voluntary Termination of Parental Rights Matters

The court shall conduct a hearing when a parent voluntarily consents to the termination of his or her parental rights. At the hearing, petitioner shall make a prima facie showing that there is good cause for termination of parental rights and that it is in the best interests of the child to terminate parental rights.

If the parent is present in court, the court shall advise the parent of the right to trial, the right to representation by counsel, and shall determine whether the parent fully understands the consequences of termination of parental rights and the alternatives to termination.

If the parent is not present in court but has signed a voluntary consent to termination of parental rights, the court shall determine whether there has been compliance with all statutory requirements regarding a written consent to termination of parental rights and whether the parent was thoroughly advised of and understood the right to trial, the right to representation by counsel, the consequences of termination of parental rights, and the alternatives to termination.

If the child is an Indian child, the consent of the parent or Indian custodian shall not be valid unless:

- (a) executed in writing;
- (b) recorded before the judge; and
- (c) accompanied by the presiding judge's certificate that the terms and consequences of the consent were explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, the birth of the Indian child shall not be valid.

RULE 79. REVIEW OF VOLUNTARY PLACEMENT MATTERS**Rule 79.01 Generally**

Subdivision 1. Scope of Review. This rule governs review of all placements made pursuant to Minnesota Statutes, section 260C.212, subdivision 8 or 9.

Subd. 2. Jurisdiction. The court assumes jurisdiction to review a voluntary placement of a child pursuant to Minnesota Statutes, section 260C.212, subdivision 8 or 9, upon the filing of a petition alleging the child to be in need of protection or services pursuant to the requirements of Minnesota Statutes, section 260C.141.

Advisory Committee Comment

The practitioner should note the application of the Indian Child Welfare Act, 25 U.S.C., section 1913(a).

Rule 79.02 Petition and Hearing

Subdivision 1. Child in Placement Due to Child's Status as Developmentally Delayed or Emotionally Handicapped.

(a) **Petition.** In the case of a child in voluntary placement pursuant to Minnesota Statutes, section 260C.212, subdivision 9, the petition shall be filed within six (6) months of the date of the voluntary placement agreement. The petition shall state the date of the voluntary placement agreement, the nature of the child's developmental delay or emotional handicap, the plan for the ongoing care of the child and the parent's participation in that plan, and the statutory basis for the petition.

(b) **Decision.** Based upon the contents of the petition, and the agreement of all parties, including the child where appropriate, the court may find the voluntary arrangement in the best interests of the child, approve the voluntary arrangement, and dismiss the matter from further jurisdiction of the court.

(c) **Further Proceedings.**

(1) The court shall give notice to the local social services agency that the matter must be returned to court for further review if the child remains in placement after twelve (12) months.

(2) If any party, including the child, disagrees with the voluntary arrangement or the sufficiency of the services offered by the local social services agency, the court shall direct the parties to answer the petition and set the matter for further hearing pursuant to Rule 71.

(d) In the case of a voluntary placement agreement pursuant to Minnesota Statutes, section 260C.212, subdivision 9, the provisions of Minnesota Statutes, section 260C.212, subdivision 11, do not apply unless custody of the child is transferred to the local social services agency pursuant to Minnesota Statutes, section 260C.201, subdivision 1.

Subd. 2. Other Voluntary Placements.

(a) **Petition.** In the case of a child in voluntary placement pursuant to Minnesota Statutes, section 260C.212, subdivision 8, the petition shall be filed within ninety (90) days of the date of the voluntary placement agreement and shall state the reasons why the child is in placement, the progress on the case plan required pursuant to Minnesota Statutes, section 260C.212, subdivision 1, and the statutory basis for the petition pursuant to Minnesota Statutes, section 260C.007, subdivision 4.

(b) **Hearing.** The matter shall be set for hearing within twenty (20) days of service.

(c) **Findings.** If all parties agree and the court finds that it is in the best interests of the child, the court may find the petition states a prima facie case that:

(1) the child's needs are being met;

(2) the placement of the child in foster care is in the best interests of the child; and

(3) the child will be returned home in the next ninety (90) days.

(d) **Approval of Placement.** If the court makes findings required pursuant to subdivision 2(c), the court shall approve the voluntary placement arrangement and continue the matter for ninety (90) days to assure the child returns to the parent's home.

(e) **Further Proceedings.**

(1) The local social services agency shall report to the court when the child returns home and the progress made by the parent on the case plan required pursuant to Minnesota Statutes, section 260C.212, subdivision 1. If the child does not return home within the ninety (90) days approved by the court, the matter shall be returned to court for further proceedings pursuant to Rule 71.

(2) If the court or any party, including the child, disagrees with the voluntary placement or the sufficiency of the services offered by the local social services agency, or if the court finds that the placement or case plan is not in the best interests of the child, the court shall direct the parties to admit or deny the petition and set the matter for further proceedings pursuant to Rule 73 or 74. If the court makes required findings pursuant to Rule 67, the court may order the child in protective care.

(f) **Calculating Time Period.** When a child is placed pursuant to a voluntary placement agreement pursuant to Minnesota Statutes, section 260C.212, subdivision 8, the time period the child is considered to be in placement for purposes of determining whether to proceed pursuant to Minnesota Statutes, section 260C.201, subdivision 11, is sixty (60) days after the voluntary placement agreement is signed; the date the court approves the placement of the child, or the date the court orders the child in protective care, whichever is earlier.

Subd. 3. Child Determined to be in Need of Protection or Services.

(a) **Further Proceedings After Adjudication.** Pursuant to subdivision 1(c)(2) or 2(e), after the parties admit the petition or the petition is proven at trial, the court may determine that the child is in need of protection or services or withhold adjudication pursuant to Rule 75.

(b) If the court determines that the child is in need of protection or services or withholds adjudication, and the court issues an order pursuant to Minnesota Statutes, section 260C.201, subdivision 1(a)(3), the provisions of Minnesota Statutes, section 260C.201, subdivision 11, shall not apply.

(c) When the court determines the child is in need of protection or services, the court may make orders pursuant to Minnesota Statutes, section 260C.201 or 260C.205.

(d) When the court determines the child is in need of protection or services or withholds such a determination, further proceedings shall be pursuant to Rule 76.

RULE 80. POST-TRIAL MOTIONS

Rule 80.01 Procedure and Timing

Subdivision 1. Scope. This rule applies only to non-dispositional post-trial matters. It does not apply to matters concerning disposition.

Subd. 2. Timing. All non-dispositional post-trial motions shall be filed within fifteen (15) days of the filing of the court's order finding that the statutory grounds set forth in the petition are or are not proved.

Subd. 3. Basis of Motion. A post-trial motion shall be made and decided 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 in deciding the motion.

Subd. 4. Time for Serving Affidavits. When a post-trial motion is based upon affidavits, such affidavits shall be served with the notice of motion. The parties and the county attorney shall have ten (10) days after such service in which to serve opposing affidavits pursuant to Rule 51. The period may be extended by the court upon an order extending the time for hearing under this rule. The court may permit reply affidavits.

Rule 80.02 New Trial on Court's Own Motion

Not later than fifteen (15) days after finding that the statutory grounds set forth in the petition are or are not proved, the court may upon its own initiative order a new trial for any reason for which it might have granted a new trial on a motion. After giving appropriate notice and an opportunity to be heard, the court may grant a motion for a new trial, timely served, for reasons not stated in the motion. In either case, the court shall specify in the order the basis for ordering a new trial.

Rule 80.03 Grounds for New Trial

A new trial may be granted on all or some of the issues for any of the following reasons:

- (a) irregularity in the proceedings of the court, referee, or prevailing party, or any order or abuse of discretion whereby the moving party was deprived of a fair trial;
- (b) misconduct of counsel;

- (c) fraud, misrepresentation, or other misconduct of the county attorney, any party, their counsel, or their guardian ad litem;
- (d) accident or surprise that 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 need have been made, then plainly assigned in the motion;
- (g) a finding that the statutory grounds set forth in the petition are proved is not justified by the evidence or is contrary to law; or
- (h) if required in the interests of justice.

Rule 80.04 Decision

The court shall rule on all post-trial motions within fifteen (15) days of submission. For good cause shown, the court may extend this period for not more than an additional fifteen (15) days. All findings shall be stated orally on the record or in writing.

Rule 80.05 Relief

In response to any post-trial motion, including a motion for a new trial, the court may:

- (a) conduct a new trial;
- (b) reopen the proceedings and take additional testimony;
- (c) amend the findings of fact and conclusions of law; or
- (d) make new findings and conclusions as required.

RULE 81. RELIEF FROM ORDER

Rule 81.01 Clerical Mistakes

Clerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected by the court at any time upon its own initiative or upon motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected with leave of the appellate court.

Rule 81.02 Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud

Upon motion and upon such terms as are just, the court may relieve a party or the party's legal representatives from a final order or proceeding and may order a new trial or grant such other relief as may be just for any of the following reasons:

- (a) mistake, inadvertence, surprise, or excusable neglect;
- (b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial;
- (c) fraud (whether denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (d) the judgment is void; or
- (e) any other reason justifying relief from the operation of the order.

The motion shall be made within a reasonable time, but in no event shall it be more than ninety (90) days following the filing of the court's order.

RULE 82. APPEAL

Rule 82.01 Applicability of Rules of Civil Appellate Procedure

Except as provided in Rule 82.02, appeals of juvenile protection matters shall be in accordance with the Rules of Civil Appellate Procedure.

Rule 82.02 Procedure

Subdivision 1. Appealable Order. An appeal may be taken by the aggrieved person from a final order of the juvenile court affecting a substantial right of the aggrieved person, including but not limited to an order adjudging a child to be in need of protection or services, neglected and in foster care.

Subd. 2. Timing. Any appeal shall be taken within thirty (30) days of the filing of the appealable order. In the event of the filing and service of a proper post-trial motion under Rule 80, the provisions of Minnesota Rules of Civil Appellate Procedure Rule 104.01, subdivisions 2 and 3, apply.

Subd. 3. Service and Filing of Notice of Appeal. Within the time allowed for an appeal from an appealable order, the person appealing shall:

(a) serve a notice of appeal upon the county attorney and all parties or their counsel if represented; and

(b) file a notice of appeal, together with proof of service upon all parties, with the clerk of appellate courts and the court administrator.

Subd. 4. Failure to File Proof of Serve. 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 a dismissal of the appeal.

Subd. 5. Notice to Legal Custodian. The court administrator shall notify the child's legal custodian of the appeal. Failure to notify the legal custodian does not affect the jurisdiction of the court of appeals.

Rule 82.03 Application for Stay of Trial Court Order

The service and filing of a notice of appeal does not stay the order of the trial court. The order of the juvenile court shall stand pending the determination of the appeal, but the reviewing court may in its discretion and upon application stay the order.

Rule 82.04 Right to Additional Review

Upon an appeal, any party or the county attorney may obtain review of an order entered in the same case which may adversely affect that person by filing a notice of review with the clerk of appellate courts. The notice of review shall specify the order to be reviewed, shall be served and filed within fifteen (15) days after service of the notice of appeal, and shall contain proof of service.

Rule 82.05 Transcript of Proceedings

The requirements regarding preparation of a transcript shall be governed by Rule 110.02 of the Rules of Civil Appellate Procedure, except that the estimated completion date contained in the certificate of transcript shall not exceed thirty (30) days.

Rule 82.06 Time for Rendering Decisions

All decisions regarding juvenile protection matters shall be issued by the appellate court within sixty (60) days of the date the case is deemed submitted pursuant to the Rules of Civil Appellate Procedure.

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 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 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 voluntarily, 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 Public Safety that your driving license be canceled or revoked;
 - h. Order community work service or a fine up to \$700; and
 - i. 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 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)

Statement of Rights

Juvenile 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____, in _____ 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 _____ Courthouse, 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)

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

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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 (Minn. 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 Shiue*, 504 F.Supp. 360 (D.Minn. 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; 609.224; 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.F.R. 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(h) 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.