Minnesota Rules of Juvenile Delinquency Procedure

Effective May 1, 1983

TABLE OF HEADNOTES

Delinquency, Juvenile Petty Offenses and Juvenile Traffic Offenses

TEXT OF RULES

Rule 3. Right to Counsel

[For text of 3.01 to 3.08, see M.S. 2010, Volume 15]

Comment--Rule 3

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

to representation by a public defender. The right to representation by a public defender is governed by Minnesota Statutes, chapter 611.

Minn. R. Juv. Del. P. 3.01 provides that the right to counsel attaches no later than the child's first appearance in juvenile court. See Minnesota Statutes 2002, section 611.262. Whether counsel is appointed by the court or retained by the child or the child's parents, the attorney must act solely as counsel for the child. American Bar Association, Juvenile Justice Standards Relating to Counsel for Private Parties (1980). While it is certainly appropriate for an attorney representing a child to consult with the parents whose custodial interest in the child potentially may be affected by court intervention, it is essential that counsel conduct an initial interview with the child privately and outside of the presence of the parents. Following the initial private consultation, if the child affirmatively wants his or her parent(s) to be present, they may be present. The attorney may then consult with such other persons as the attorney deems necessary or appropriate. However, the child retains a right to consult privately with the attorney at any time, and either the child or the attorney may excuse the parents in order to speak privately and confidentially.

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

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

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

Minn. R. Juv. Del. P. 3.02 subd 2 requires a court to appoint counsel for a child charged with a misdemeanor unless that child affirmatively waives counsel as provided in Minn. R. Juv. Del. P. 3.04. Minn. R. Juv. Del. P. 3.02 subd 3 requires the appointment of counsel or

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

In State v. Borst, 278 Minn. 388, 154 N.W.2d 888 (1967), the Minnesota Supreme Court, using its inherent supervisory powers, anticipated the United States Supreme Court's Argersinger and Scott decisions, and shortly after Gideon, required the appointment of counsel even in misdemeanor cases "which may lead to incarceration in a penal institution." Id. at 397, 154 N.W.2d at 894. Accord City of St. Paul v. Whidby, 295 Minn. 129, 203 N.W.2d 823 (1972); State v. Collins, 278 Minn. 437, 154 N.W.2d 688 (1967); State v. Illingworth, 278 Minn. 484, 154 N.W.2d 687 (1967) (ordinance violation). The Borst Court relied, in part, upon Gault's ruling on the need for counsel in delinquency cases to expand the scope of the right to counsel for adult defendants in any misdemeanor or ordinance prosecutions that could result in confinement. 278 Minn. at 392-93, 154 N.W.2d at 891. Like the Court in Gault, Borst recognized the adversarial reality of even "minor" prosecutions.

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

Minnesota Statutes, section 260B.007, subdivision 16, defines "juvenile petty offenses," and converts most offenses that would be misdemeanors if committed by an adult into petty offenses. Minn. R. Juv. Del. P. 3.02 subd 5 and 17.02 explain when a juvenile petty offender is entitled to court-appointed counsel. If a child is charged as a juvenile petty offender, the child or the child's parents may retain and be represented by private counsel, but the child does not have a right to the appointment of a public defender or other counsel at public expense. The denial of access to court-appointed counsel is based on the limited dispositions that the juvenile court may impose on juvenile petty offenders. Minnesota Statutes 2002, section 260B.235, subdivision 4. However, children who are charged with a third or subsequent juvenile alcohol or controlled substance offense are subject to out-of-home placement and therefore have a right to court-appointed counsel, despite their status as juvenile petty offenders. If the court is authorized to impose a disposition that includes out-of-home placement, then the provisions of Minn. R. Juv. Del. P. 3.02 subd 5 and 17.02 are applicable and provide the child a right to counsel at public expense.

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

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

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

Minn. R. Juv. Del. P. 3.04 prescribes the circumstances under which a child charged with an offense may waive counsel. The validity of relinquishing a constitutional right is determined by assessing whether there was a "knowing, intelligent, and voluntary waiver" under the "totality of the circumstances." See, e.g., Fare v. Michael C., 442 U.S. 707 (1979); Johnson v. Zerbst, 304 U.S. 458 (1938) (waiver of counsel); In re M.D.S., 345 N.W.2d 723 (Minn. 1984); State v. Nunn, 297 N.W.2d 752 (Minn. 1980); In re L.R.B., 373 N.W.2d 334 (Minn. Ct. App. 1985). The judicial position that a young minor can "knowingly and intelligently" waive constitutional rights is consistent with the legislature's judgment that a youth can make an informed waiver decision without parental concurrence or consultation with an attorney. Minnesota Statutes 2002, section 260B.163, subdivision 10 ("Waiver of any right ... must be an express waiver intelligently made by the child after the child has been fully and effectively informed of the right being waived").

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

In State v. Rubin, the court described the type of "penetrating and comprehensive examination" that must precede a "knowing and intelligent" waiver and strongly recommended the appointment of counsel "to advise and consult with the defendant as to the waiver." See also ABA Standards of Criminal Justice, Providing Defense Services, sections 5-7.3 (1980); Minn. R. Crim. P. 5.04. Minn. R. Juv. Del. P. 3.04 subd 1 prescribes the type of "penetrating and comprehensive examination" expected prior to finding a valid waiver. Prior to an initial waiver of counsel, a child must consult privately with an attorney who will describe the scope of the right to counsel and the disadvantages of self-representation. Following consultation with counsel, any waiver must be in writing and on the record, and counsel shall appear with the child to assure the court that private consultation and full discussion has occurred.

To determine whether a child "knowingly, intelligently, and voluntarily" waived the right to counsel, Minn. R. Juv. Del. P. 3.04 subd 1 requires the court to look at the "totality

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

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

Minn. R. Juv. Del. P. 3.06 prescribes the standard to be applied by the court in determining whether a child or the child's family is sufficiently indigent to require appointment of counsel. The standards and methods for determining eligibility are the same as those used in Minn. R. Crim. P. 5.04 subds 3-5.

Minn. R. Juv. Del. P. 3.06 subd 2 provides that if the parent(s) of a child can afford to retain counsel but have not done so and the child cannot otherwise afford to retain counsel, then the court shall appoint counsel for the child. When parents can afford to retain counsel but do not do so and counsel is appointed for the child at public expense, in the exercise of its sound discretion, the court may order reimbursement for the expenses and attorney's fees expended on behalf of the child. Minnesota Statutes 2002, section 260B.331, subdivision 5 ("[T]he court may inquire into the ability of the parents to pay for such counsel's services and, after giving the parents a reasonable opportunity to be heard, may order the parents to pay attorneys fees"). See, e.g., In re M.S.M., 387 N.W.2d 194, 200 (Minn. Ct. App. 1986).

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

Rule 4. Warrants

4.01 Search Warrants Upon Oral Testimony

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

(Added effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011.)

[For text of 4.02 and 4.03, see M.S. 2010, Volume 15]

Rule 6. Charging Document

[For text of 6.01 to 6.04, see M.S. 2010, Volume 15]

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 Rule 4;

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

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

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

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

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

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011.)

6.06 Procedure on Filing a Charging Document With the Court

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

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

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

The Plea and Waiver Form shall advise the child that payment constitutes a plea of guilty and an admission (a) that the child understands the nature of the offense alleged; (b) that the child makes no claim of innocence; (c) that the child's conduct constitutes the

offense(s) to which the child is pleading guilty; (d) that the plea is made freely, under no threats or promises, and (e) that the child has the following rights which the child voluntarily waives:

(1) the right to the appointment of counsel if the child is subject to out-of-home placement as provided in Minnesota Statutes, section 260B.235, subdivision 6;

(2) the right to trial;

(3) the presumption of innocence until the prosecuting attorney proves the charges beyond a reasonable doubt;

(4) the right to remain silent;

(5) the right to testify on the child's own behalf;

(6) the right to confront witnesses against oneself;

(7) the right to subpoena witnesses;

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

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

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight July 1, 2011.)

6.07 Dismissal by Prosecuting Attorney

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

(Amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011.)

6.08 Dismissal by Court

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

(Amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011.)

Comment--Rule 6

Previously, this rule only related to petitions in juvenile court. Due in large part to the high volume of gross misdemeanor alcohol related driving offenses, the law was amended to permit tab charges for these offenses to get cases to court more promptly.

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.

In its revision of juvenile statutes, the legislature also expanded the list of offenses that may be charged by tab charge rather than petition in juvenile court. See Minnesota Statutes 2002, section 260B.007, subdivision 16. 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, chapter 169A. Adults have the right to demand a formal complaint in place of a tab charge. If a demand for a formal complaint is made by an adult charged with a gross misdemeanor alcohol offense, the prosecutor must file the complaint within 48 hours if the defendant is in custody, and within 10 days if not in custody. These rules have afforded juveniles the right to demand a petition where the child is charged with a misdemeanor(s) or gross misdemeanor(s).

Minn. R. Juv. Del. P. 6.06 subd 2 provides that the court administrator shall promptly schedule the matter for hearing when a charging document is filed with the court.

Minn. R. Juv. Del. P. 6.03 subd 2 provides that a petition shall be signed by the prosecuting attorney before it is filed with the court. Minnesota Statutes 2002, section 260B.141, subdivision 1, provides that any reputable person having knowledge of a child who is a resident of this state, who appears to be delinquent, may petition the juvenile court.

Minn. R. Juv. Del. P. 6.03 subds 3 and 5 set forth the necessary contents of the petition. A sample petition form as well as a listing of the administrative content approved by the Juvenile Delinquency Rules Committee will be published by the State Court Administrator on the Minnesota Judicial Branch Web site.

Rule 13. Trials

[For text of 13.01 and 13.02, see M.S. 2010, Volume 15]

13.03 Trial

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

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

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

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

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

(A) the prosecuting attorney may make an opening statement, confining the statement to the facts that it expects to prove;

(B) the child's counsel may make an opening statement, after the prosecutor's opening statement or may reserve the opening statement until immediately before offering the defense evidence. The statement shall be confined to a statement of the defense and the facts expected to be proved;

(C) the prosecuting attorney shall offer evidence in support of the charging document;

(D) the child's counsel may offer evidence in defense of the child;

(E) the child's counsel and the prosecuting attorney shall have the right to cross-examine witnesses;

(F) the prosecuting attorney may offer evidence in rebuttal of the defense evidence, and the child's counsel may then offer evidence in rebuttal of the prosecuting attorney rebuttal evidence. In the interests of justice the court may permit either the prosecuting attorney or the child's counsel to offer evidence upon the original case;

(G) at the conclusion of the evidence, the prosecuting attorney may make a closing argument; and

(H) the child's counsel may make a closing argument.

Subd. 3. Trial on Stipulated Facts. By agreement of the child and the prosecuting attorney, a determination of the child's guilt may be submitted to and tried by the court based on stipulated facts. Before proceeding in this manner, the child shall acknowledge

and waive the rights to testify at trial, to have the prosecution witnesses testify in open court in the child's presence, to question those prosecution witnesses, and to require any favorable witnesses to testify for the child in court. The agreement and the waiver shall be in writing or orally on the record. Upon submission of the case on stipulated facts, the court shall proceed as in any other trial pursuant to Rule 13.

(Amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011.)

[For text of 13.04 to 13.08, see M.S. 2010, Volume 15]

13.09 Findings

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

(Amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011.)

[For text of 13.10, see M.S. 2010, Volume 15]

Rule 15. Delinquency Disposition

[For text of 15.01, see M.S. 2010, Volume 15]

15.02 Timing

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

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

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

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

Subd. 2. Order. The court shall enter a dispositional order pursuant to Rule 15.05 within three (3) days of the disposition hearing. For good cause, the court may extend the time to enter a dispositional order to fifteen (15) days from the disposition hearing.

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

Subd. 4. Transfer of File. If the matter is to be transferred to the child's county of residence for disposition, the court shall 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 260B.105. For convenience of the participants, the court which accepts a plea may determine the disposition for the court which will supervise the child's probation, if the transferring court has conferred with the receiving court and there is agreement regarding the disposition.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011.)

[For text of 15.03 to 15.08, see M.S. 2010, Volume 15]

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;

(G) the finding that the allegations of the charging document are proved is not justified by the evidence or is contrary to law; or

(H) ineffective assistance of child's counsel.

Subd. 2. Basis of Motion. A motion for a new trial shall be made and heard on the files, exhibits and minutes of the court. Pertinent facts that would not be a part of the minutes may be shown by affidavit except as otherwise provided by these rules. A full or partial transcript of the court reporter's notes of the testimony taken at the trial or other verbatim recording thereof may be used on the hearing of the motion.

Subd. 3. Time for Motion.

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

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

Subd. 4. Time for Serving Affidavits. 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.

(Amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011.)

[For text of 16.02 to 16.05, see M.S. 2010, Volume 15]

Rule 17. Juvenile Petty Offender and Juvenile Traffic Offender

[For text of 17.01 to 17.03, see M.S. 2010, Volume 15]

17.04 The Charging Document and Notice of Arraignment

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

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011.)

[For text of 17.05 to 17.19, see M.S. 2010, Volume 15]

Rule 18. Certification of Delinquency Matters

[For text of 18.01 to 18.07, see M.S. 2010, Volume 15]

18.08 Termination of Jurisdiction Upon Certification

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

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

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

(B) If the alleged offense was committed in a county other than where certification is ordered, juvenile court jurisdiction terminates in five (5) days or before if the prosecuting attorney files a complaint as provided under Minn. R. Crim. P. 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 Minn. R. Crim. P. 5.01(d) and 6.02; for these purposes, the juvenile court petition shall serve in lieu of a criminal complaint as the charging instrument.

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

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007; amended effective for all delinquency

actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011.)

[For text of 18.09, see M.S. 2010, Volume 15]

Comment--Rule 18

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

Much of the text of Minn. R. Juv. Del. P. 18.05 subd 1(A) is taken from Minnesota Statutes 2002, section 260B.163.

The sanction for delay in Minn. R. Juv. Del. P. 18.05 subd 1(B) and 18.07 subd 3 is modeled after Minn. R. Crim. P. 11.10, which as of January 1, 2010 is now Minn. R. Crim. P. 11.09. See In re Welfare of J.J.H., 446 N.W.2d 680, 681-82 (Minn. Ct. App. 1989) (order issued 66 days after hearing, 38 days after submission of written argument; because rule contains no sanction, reversal denied). See also McIntosh v. Davis, 441 N.W.2d 115 (Minn. 1989) (where alternative remedies available, mandamus not appropriate to enforce time limit of Minn. R. Crim. P. 11.10 speedy trial rule).

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

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

Minn. R. Juv. Del. P. 18.05 subd 2(B) requires a determination on appearances of necessary persons. Under Minnesota Statutes 2002, section 260B.163, subdivision 7, 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 2002, section 260B.154.

Much of the content of Minn. R. Juv. Del. P. 18.05 subd 3 is modeled after Minn. R. Crim. P. 11.04 and 18.05 subd 1. The court may employ police statements for probable cause determinations in the same manner as permitted in adult proceedings under Minn. R. Crim. P. 11.04. Also note In re Welfare of E.Y.W., 496 N.W.2d 847, 850 (Minn. Ct. App. 1993) (juvenile not entitled to exclusionary hearing before decision on probable cause).

Minn. R. Juv. Del. P. 18.05 subd 3 and 18.07 subd 2(A)(2) eliminate the need for a probable cause finding when a delinquency accusation is presented by an indictment. Accusation by indictment is uncommon, but might occur more often as the result of grand jury proceedings conducted after 1994 statutory amendments on the question of whether a juvenile is to be accused of first degree murder in adult proceedings. See Minnesota Statutes 2002, section 260B.007, subdivision 6. Minn. R. Juv. Del. P. 18.05 subd 4(B) is consistent with case law. Because the certification question is dispositional in nature, strict application of the rules of evidence is thought to be inappropriate. Minn. R. Juv. Del. P. 18.05 does not address the consequences of the child's testimony at a hearing. See Simmons v. United States, 390 U.S. 377 (1968) and State v. Christenson, 371 N.W.2d 228 (Minn. Ct. App. 1985). Cf. Harris v. New York, 401 U.S. 222 (1971).

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

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

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

Under Minnesota Statutes 2002, sections 260B.101, subdivision 2, 260B.007, subdivision 6, paragraph (b), and 260B.125, subdivision 10, the accusation of first degree murder by a 16 or 17 year old child takes the case out of the delinquency jurisdiction of the juvenile court. If this accusation is first made by complaint, and is followed by an indictment that does not accuse the child of first degree murder but of some other crime, the proceedings come within the exclusive jurisdiction of the juvenile court, but subject to action of the juvenile court on any motion for certification of the proceedings to adult court. In these circumstances, the juvenile court would deal with an accusation by indictment in the same fashion as proceedings might otherwise occur on a juvenile court petition. Once adult court proceedings begin on an indictment for first degree murder, regardless of the ultimate conviction, the proceedings remain within adult court jurisdiction. Indictments may be received by any district court judge including one sitting in juvenile court.

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

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

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

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

Rule 19. Extended Jurisdiction Juvenile Proceedings and Prosecution

[For text of 19.01 to 19.11, see M.S. 2010, Volume 15]

Comment--Rule 19

The determination of "presumptive prison" under the Minnesota Sentencing Guidelines should be analyzed pursuant to those guidelines.

The sanction for delay in Minn. R. Juv. Del. P. 19.04 subd 1(B) and 19.06 subd 3 is modeled after Minn. R. Crim. P. 11.10, which as of January 1, 2010 is now Minn. R. Crim. P. 11.09. See In re Welfare of J.J.H., 446 N.W.2d 680, 681-82 (Minn. Ct. App. 1989) (order issued 66 days after hearing, 38 days after submission of written argument; because rule contains no sanction, reversal denied). See also McIntosh v. Davis, 441 N.W.2d 115 (Minn. 1989) (where alternative remedies available mandamus not appropriate to enforce time limit of Minn. R. Crim. P. 11.10 speedy trial rule).

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

Minn. R. Juv. Del. P. 19.04 does not address the consequences of the child's testimony at a hearing or whether it can be subsequently used against the child. See Simmons v. United States, 390 U.S. 377 (1968); State v. Christenson, 371 N.W.2d 228 (Minn. Ct. App. 1985) (impeachment); cf. Harris v. New York, 401 U.S. 222 (1971).

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

Previously, the last sentence to Rule 19.04 subd 2(A) stated, "If witnesses are to be called, the court may continue the hearing." This statement was deleted because the committee felt it was redundant in light of the previous sentence, which allows the court to extend the time of the hearing for good cause.

Much of the content of Minn. R. Juv. Del. P. 19.04 subd 3 is modeled after Minn. R. Crim. P. 11.04 and 18.05 subd 1. The court may employ police statements for probable cause determinations in the same manner as permitted in adult proceedings under Minn. R. Crim. P. 11.04. Also note, In re Welfare of E.Y.W., 496 N.W.2d 847, 850 (Minn. Ct. App. 1993) (juvenile not entitled to exclusionary hearing before decision on probable cause).

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

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

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

The public safety factors listed in Minn. R. Juv. Del. P. 19.05 mirror those set forth in Minnesota Statutes 2002, section 260B.125, subdivision 4, and eliminate the need for non-offense related dangerousness. See In re Welfare of D.M.D., 607 N.W.2d 432 (Minn. 2000).

Rule 19.09(B) was amended to clarify that a continuance beyond the timelines prescribed by the Rule may be necessary in limited circumstances. For example, a reasonable delay may be appropriate to facilitate necessary scientific testing. The Committee adopted a "good cause" standard for use in determining whether to grant a continuance. "Good cause" is defined in case law; however, the Committee intends a strict application of the standard. Time is of the essence in an extended jurisdiction juvenile prosecution. Juvenile dispositional options and treatment opportunities may be lost if the trial is unnecessarily delayed. The court should consider the unique nature of extended jurisdiction juvenile when deciding whether to grant a continuance for good cause.

Following the presentation of evidence by the prosecuting attorney the child may move the court for directed relief on the grounds that the burden of proof has not been met.

Under Minnesota Statutes 2002, section 260B.163, subdivision 7, 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 2002, section 260B.154.

Pursuant to Minnesota Statutes 2002, section 260B.245, 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 2002, sections 609.115 and 631.20. 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).

In accordance with the procedure and law set forth in State v. B.Y., 659 N.W.2d 763 (Minn. 2003), Minn. R. Juv. Del. P. 19.11 subd 3 incorporates consideration of the Austin factors (see State v. Austin, 295 N.W.2d 246 (Minn. 1980)) into the court's determination of whether to revoke the stayed prison sentence of an EJJ probationer. This is in contrast to the decision to revoke probation in delinquency cases, for which consideration of the Austin factors is not required. In re Welfare of R.V., 702 N.W.2d 294 (Minn. Ct. App. 2005).

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

The decision in In Re Welfare of T.C.J., 689 N.W.2d 787 (Minn. Ct. App. 2004), that Minnesota Statutes, section 260B.130, subdivision 4, paragraph (b), violates the Equal Protection Clause, raises an issue regarding the application of Minn. R. Juv. Del. P. 19.10 subd 3 which was modeled after the statute.

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

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

20.01 Proceeding when Child is Believed to be Incompetent

Subdivision 1. Incompetency to Proceed Defined. A child is incompetent and shall not be permitted to enter a plea, be tried, or receive a disposition for any offense when the child lacks sufficient ability to:

(A) consult with a reasonable degree of rational understanding with the child's counsel; or

(B) understand the proceedings or participate in the defense due to mental illness or mental deficiency.

Subd. 2. Counsel. Any child subject to competency proceedings shall be represented by counsel.

Subd. 3. Proceedings. The prosecuting attorney, the child's counsel or the court shall bring a motion to determine the competency of the child if there is reason to doubt the competency of the child during the pending proceedings.

The motion shall set forth the facts constituting the basis for the motion but the child's counsel shall not divulge communications in violation of the attorney-client privilege. The bringing of the motion by the child's counsel does not waive the attorney-client

privilege. Any such motion may be brought over the objection of the child. Upon such motion, the court shall suspend the proceedings and shall proceed as follows:

(A) *Felony or Gross Misdemeanor.* If the offense is a felony or gross misdemeanor, the court shall determine whether there is sufficient probable cause to believe the child committed the offense charged before proceeding pursuant to this rule. If there is sufficient showing of probable cause, the court shall proceed according to this rule. If the court finds insufficient probable cause to believe the child committed the offense charged, the charging document against the child shall be dismissed.

(B) *Other Matters.* If the offense is a misdemeanor, juvenile petty matter or juvenile traffic offense, the court having trial jurisdiction shall proceed according to this rule, or dismiss the case in the interests of justice.

(C) *Examination.* If there is probable cause, the court shall proceed as follows. The Court shall suspend the proceedings and appoint at least one examiner as defined in the Minnesota Commitment Act, Minnesota Statutes, 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's counsel or prosecuting attorney.

The court shall further direct the mental-health professionals to notify promptly the prosecuting attorney, the child's counsel, and the court if such mental-health professionals conclude, upon examination, that the child presents an imminent risk of serious danger to another person, is imminently suicidal, or otherwise needs emergency intervention.

(D) *Report of Examination.* Within sixty (60) days, 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; and

(4) If the examination could not be conducted because the child is unwilling to participate, a statement to that effect with an opinion, if possible, as to whether the child's unwillingness was the result of mental illness or deficiency.

Subd. 4. Hearing and Determination of Competency.

(A) *Hearing and Notice.* Upon receipt of the report and notice to the parties, the court shall hold a hearing within ten (10) days to review the report with the parties. If either party objects to the report's conclusion regarding the child's competency to proceed, the court shall hold a hearing within ten (10) days on the issue of the child's competency to proceed.

(B) *Going Forward with Evidence.* If the child's counsel moved for the examination, the child's counsel shall go forward first with evidence at the hearing. If the prosecuting attorney or the court on its own initiative, moved for the examination, the prosecuting attorney shall go forward with evidence unless the court otherwise directs.

(C) *Report and Evidence.* The examination report and other evidence as to the child's mental condition may be admitted at the hearing. The person who prepared the report or any individual designated by that person as a source of information for preparation of the report, other than the child or the child's counsel, is considered the court's witness and may be called and cross-examined as such by either party.

(D) *Child's Counsel as Witness.* The child's counsel may testify as to personal observations of and conversations with the child to the extent that attorney-client privilege is not violated, and continue to represent the child. The prosecuting attorney may examine the child's counsel testifying to such matter.

The court may inquire of the child's counsel concerning the attorney-client relationship and the child's ability to communicate effectively with the child's counsel. However, the court may not require the child's counsel to divulge communications in violation of the attorney-client privilege. The prosecuting attorney may not cross-examine the child's counsel responding to the court's inquiry.

(E) *Decision and Sufficiency of Evidence.* If the court determines that the child is competent by the greater weight of evidence, the court shall enter a written order finding competency. Otherwise, the court shall enter a written order finding incompetency. The court shall enter its written order within fifteen (15) days of the hearing.

Subd. 5. Effect of Finding on Issue of Competency to Proceed.

(A) *Finding of Competency.* If the court determines that the child is competent to proceed, the proceedings against the child shall resume.

(B) *Finding of Incompetency.* If the offense is a misdemeanor, 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 gross misdemeanor, and the court determines that the child is incompetent to proceed, the court has the discretion to dismiss or suspend the proceedings against the child except as provided by Rule 20.01, subdivision 7. If the offense is a felony, and the court determines that the child is incompetent to proceed, the proceedings against the child shall be further suspended except as provided by Rule 20.01, subdivision 7.

(1) If the court determines that the child is mentally ill or 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, Minnesota Statutes, chapter 253B.

(2) If it is determined that commitment proceedings are inappropriate and a petition has been filed alleging the child is in need of protection or services (CHIPS), the

court shall order such jurisdiction be continued. If the child is not under CHIPS jurisdiction, the court may order the child held for up to seventy-two (72) hours and direct CHIPS proceedings to be initiated.

(3) If it is determined that neither commitment proceedings nor CHIPS proceedings are appropriate, the child shall be released to the child's parent(s), legal guardian or legal custodian under conditions deemed appropriate to the court.

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

Unless the charging document against the child has been dismissed as provided by Rule 20.01, subdivision 7, the trial court, child's counsel and the prosecuting attorney shall be notified of any proposed institutional transfer, partial institutionalization status, and any proposed termination, discharge, or provisional discharge of the juvenile protection case. The prosecuting attorney shall have the right to participate as a party in any proceedings concerning such proposed changes in the child's commitment or status.

Subd. 7. Dismissal of Proceedings.

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

(1) the child's nineteenth (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 Rule 20.01, subdivision 7(A).

(B) For all cases pending certification except murder, proceedings shall be dismissed upon the expiration of three (3) years from the date of the finding of the child's incompetency unless the prosecuting attorney, before the expiration of the three (3) year period, files a written notice of intention to prosecute the child when the child has been restored to competency. Murder charges shall not be dismissed based upon a finding of incompetency.

Subd. 8. Determination of Legal Issues Not Requiring Child's Participation. The fact that the child is incompetent to proceed shall not preclude the child's counsel from making any legal objection or defense that can be fairly determined without the personal participation of such child.

Subd. 9. Admissibility of Child's Statements. When a child is examined under this rule, any statement made by the child for the purpose of the examination and any evidence derived from the examination shall be admissible in evidence only at the proceedings to determine whether the child is competent to proceed.

(Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12:00 o'clock midnight January 1, 1998; amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2008; amended effective for all delinquency

actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011.)

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's counsel 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 Rule 20.01, subdivision 3(C). The court may order that the examination for competency under Rules 20.01 and 20.02 be conducted simultaneously.

Subd. 3. Refusal of the Child to be Examined. If the child does not participate in the examination so that the examiner is unable to make an adequate report to the court, the court may:

(A) prohibit the child from introducing evidence of the child's mental illness or mental deficiency;

(B) strike any such evidence previously introduced;

(C) permit any other party to comment on and to introduce evidence of the child's refusal to cooperate to the trier of the facts; and

(D) make any such other ruling as it deems just.

Subd. 4. Disclosure of Reports and Records of Child's Mental Illness or 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 court administrator shall not otherwise disclose the report except by court order. 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; and

(E) If the examination cannot be conducted by reason of the child's unwillingness to participate, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the child was the result of mental illness or 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 Rule 20.01 or 20.02, the admissibility at trial of any statements made by the child for the purposes of the examination and any evidence obtained as a result of such statements shall be determined by the following rules:

(A) *Notice by Child of Sole Defense of Mental Illness or Mental Deficiency.* If a child notifies the court and prosecuting attorney under Rule 20.02, subdivision 1 of an intention to rely solely on the defense of mental illness or 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 Rule 20.02, subdivision 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 Rule 13.09. If the court determines that the elements of the offense have been proved beyond a reasonable doubt and the child is relying on the sole defense of mental illness or 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 Rule 13.09.

(2) Extended Jurisdiction Juvenile Proceedings. A court trial in an extended jurisdiction juvenile proceeding shall be conducted pursuant to Rule 20.02, subdivision 7(D)(1). A jury trial in an extended jurisdiction juvenile proceeding shall be conducted pursuant to Minnesota Rules of Criminal Procedure 20.02, subdivision 7.

Subd. 8. Procedure After Hearing.

(A) *Mental Illness or 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.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight July 1, 2011.)

Comment -- Rule 20

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

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

"A determination of competency, even in the context of juvenile adjudicatory proceedings, is a fundamental right. Because of this and because dispositions in juvenile proceedings, including rehabilitative dispositions, may involve both punishment and a substantial loss of liberty, the level of competence required to permit a child's participation in juvenile court proceedings can be no less than the competence demanded for trial or sentencing of an adult." In re Welfare of D.D.N., 582 N.W.2d 278, 281 (Minn. Ct. App. 1998) (citation omitted). The court has a continuing obligation to inquire into a juvenile's competency to stand trial when substantial information exists, or the child's observed demeanor raises doubts as to competency. In re Welfare of S.W.T., 277 N.W.2d 507, 512 (Minn. 1979). C.f. Drope v. Missouri, 420 U.S. 162, 179 (1975); Pate v. Robinson, 383 U.S. 375, 385 (1966); State v. Jensen, 278 Minn. 212, 215, 153 N.W.2d 339 (Minn. 1967).

A juvenile delinquency proceeding is not a criminal proceeding. See Minnesota Statutes 2002, section 260B.225, (stating a violation of a state or local law or ordinance by a child before becoming 18 is not a crime). Although the right to counsel has been

recognized for juveniles in In re Gault, 387 U.S. 1, 41 (1967), the corollary right to self-representation has not been established in the juvenile context. The Committee recognized that children subject to competency proceedings may be vulnerable; therefore, it would not be appropriate to allow a child to waive counsel prior to a court determining that the child is competent.

Rule 21. Appeals

[For text of 21.01 and 21.02, see M.S. 2010, Volume 15]

21.03 Appeal By Child

Subdivision 1. Right of Appeal. A child may appeal as of right from an adverse final order and certain non-final orders, as enumerated in Rule 21.03, subdivisions 1(A) and (B). In addition, a child shall be permitted to seek a discretionary appeal as provided for in Minn. R. Crim. P. 28.02, subdivision 3. A motion for a new trial is not necessary in order to appeal.

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

(1) certification to adult court, whether the order is entered or stayed pursuant to Rule 21.03, subdivision 3;

(2) continuance without adjudication and disposition in delinquency proceedings;

(3) adjudication and disposition in delinquency proceedings;

(4) adjudication and disposition in juvenile petty or juvenile traffic offender proceedings;

(5) denial of motion for new trial;

(6) extended jurisdiction juvenile prosecution designation, whether the order is entered or stayed pursuant to Rule 21.03, subdivision 3;

(7) conviction, disposition, and sentencing of an extended jurisdiction juvenile;

(8) an order, on the prosecuting attorney's motion, finding the child incompetent, if the underlying offense would be a felony or a gross misdemeanor if the offense were committed by an adult;

(9) an order modifying a disposition;

(10) an order revoking probation including an order adjudicating a child delinquent after the child was granted a continuance without adjudication;

(11) an order revoking extended jurisdiction juvenile status; and

(12) an order revoking the stay of the adult sentence of an extended jurisdiction juvenile.

(B) *Non-Final Orders.* A child may appeal from the following non-final orders:

(1) an order refusing or imposing conditions of release; and

(2) an order granting a new trial when a child's motion for acquittal is denied, if the underlying offense would be a felony or a gross misdemeanor if the offense were committed by an adult.

Subd. 2. Procedure for Appeals.

(A) *Orders Revoking Extended Jurisdiction Juvenile Status and Orders Revoking the Stayed Adult Sentence of an Extended Jurisdiction Juvenile.* Probationer appeals under Rule 21.03, subdivision 1(A)(11) and (12) shall be governed by the procedure provided for appeal from a sentence by Minn. R. Crim. P. 27.04, subdivision 3(4) and 28.05.

(B) *All Other Appealable Orders.* All other juvenile appeals shall proceed as follows:

(1) *Time for Taking an Appeal.* An appeal shall be taken within thirty (30) days after service of the notice of filing of the appealable order upon the child's counsel by the court administrator as provided in Rule 28.

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

(a) a notice of appeal naming the party taking the appeal, identifying the order being appealed, and listing the names, addresses, and telephone numbers of all counsel;

(b) proof of service of notice of appeal on the adverse party, the district court administrator, and the court reporter;

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

(d) two copies of the statement of the case as provided for by Minn. R. Civ. App. P. 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 persons shall be filed with the clerk of the appellate courts.

Whether a filing fee is required shall be determined pursuant to Minn. R. Civ. App. P. 103.01, subdivision 3. A cost bond is not required.

Except for the timely filing of the notice of appeal, if a party fails to comply with these rules, the validity of the appeal may not be affected except as deemed appropriate by the court of appeals.

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

(a) Within ten (10) days of filing the notice of appeal, appellant shall order the necessary transcript and notify the court reporter that the transcript is due within thirty (30) days of the court reporter's receipt of the appellant's request for transcript.

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

(c) If the parties have stipulated to the accuracy of a transcript of videotape or audiotape exhibits and made the transcript part of the district court record, it becomes part of the record on appeal, and it is not necessary for the court reporter to transcribe the exhibits. If no such transcript exists, a transcript need not be prepared unless expressly requested by the appellant or the respondent. If the exhibit must be transcribed, the court reporter need not certify the correctness of this transcript.

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

(a) Extended Jurisdiction Juvenile and Certification Determinations.

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

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

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

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

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

(i) The appellant shall serve and file the appellant's brief and 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.

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

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

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

Subd. 3. Stay Pending Appeal.

(A) *Generally.* Pending an appeal, a stay may be granted by the juvenile court or the court of appeals. A motion for stay initially shall be presented to the juvenile court.

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

If a stay is granted, conditions of release must be set pursuant to Rule 21.03, subdivision 4(B).

(B) *Placement Pending Appeal.*

(1) Upon Certification. If the district court determines that a certified child should be detained, placement pending appeal shall be governed by Minn. R. Crim. P. 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 260B.176.

Subd. 4. Release of Child.

(A) *Motion for Release Pending Appeal.* When release is not addressed in the motion for a stay, application for release pending appeal shall be made to the trial court. If the trial court refuses to release a child pending appeal, or imposes conditions of release, the trial court shall state the reasons on the record. Thereafter, if an appeal is pending, a motion for release or for modification of the conditions of release pending review may be made to the court of appeals. The motion shall be determined upon such 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.* Minn. R. Crim. P. 6.02 shall govern conditions of release upon certification. If a stay is granted under Rule 21.03, subdivision 3 of this rule, Minnesota Statutes, section 260B.176, shall govern conditions of release. The child has the burden of proving that the appeal is not frivolous or taken for delay and that the child does

not pose a risk for flight, is not likely to commit a serious crime, and is not likely to tamper with witnesses. The trial court shall make written findings on each of the above factors. The trial court shall take into consideration that:

(1) the child may be compelled to serve the sentence or disposition imposed before the appellate court has an opportunity to decide the case; and

(2) the child may be confined for a longer time pending the appeal than would be possible under the potential sentence or disposition for the offense charged.

(C) *Credit for Time Spent in Custody.* The time a child is in custody pending an appeal may be considered by the trial court in determining the disposition imposed in juvenile proceedings.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2008; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011.)

21.04 Appeal by Prosecuting Attorney

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

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

(B) denial of a motion for certification or denial of a motion for designation as an extended jurisdiction juvenile prosecution;

(C) denial of a motion to revoke extended jurisdiction juvenile status following an admission of a violation of probation or a determination that a violation of probation has been proven;

(D) denial of a motion to revoke the stay of the adult sentence of an extended jurisdiction juvenile following an admission of a violation of probation or a determination that a violation of probation has been proven;

(E) pretrial orders, including suppression orders; and

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

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

Subd. 2. Attorney Fees. The child shall be allowed reasonable attorney fees and costs incurred for appeal. The child's attorney fees and costs shall be paid by the governmental unit responsible for prosecution of the case.

Subd. 3. Procedure for Appeals.

(A) Prosecutorial appeals under Rule 21.04, subdivision 1(A), (B), and (F), shall be governed by Rule 21.03, subdivision 2.

(B) Prosecutorial appeals under Rule 21.04, subdivision 1(C) and (D) shall be governed by the procedure provided for appeal from a sentence by Minn. R. Crim. P. 27.04, subdivision 3(4) and 28.05.

(C) Prosecutorial appeals under Rule 21.04, subdivision 1(E) shall proceed as follows:

(1) *Time for Appeal.* The prosecuting attorney may not appeal until all issues raised during the evidentiary hearing and pretrial conference have been determined by the trial court. The appeal shall be taken within twenty (20) days after notice of entry of the appealable order is served upon the prosecuting attorney by the district court administrator. An appeal by the prosecuting attorney under this rule bars any further appeal by the prosecuting attorney from any existing orders not included in the appeal. No appeal of a pretrial order by the prosecuting attorney shall be taken after jeopardy has attached. An appeal under this rule does not deprive the trial court of jurisdiction over pending matters not included in the appeal.

(2) *Notice of Appeal and Filing.* Rule 21.03, subdivision 2(B) shall govern notice of appeal and filing of an appeal by the prosecuting attorney except that the prosecuting attorney must file a statement of the case as provided for by Minn. R. Civ. App. P. 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.

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

(a) Within fifteen (15) days of delivery of the transcripts, appellant shall file the appellant's brief with the clerk of the appellate courts together with proof of service upon the respondent.

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

(c) Within eight (8) days of service of appellant's brief upon respondent, the respondent shall file the respondent's brief with the appellate court clerk together with proof of service upon the appellant.

Subd. 4. Stay. Upon oral notice that the prosecuting attorney intends to appeal a pretrial order, the trial court shall order a stay of the proceedings for twenty (20) days to allow time to perfect the appeal.

Subd. 5. Conditions of Release. Upon appeal by the prosecuting attorney of a pretrial order, the conditions for the child's release pending the appeal shall be governed by Rule 5, or, for children certified to adult court, Minn. R. Crim. P. 6.02, subds 1 and 2. The trial court shall consider whether the child may be confined for a longer time pending the appeal than would be possible under the potential sentence or disposition for the offense charged.

Subd. 6. Cross-Appeal by Child. Upon appeal by the prosecuting attorney, the child may obtain review of any pretrial order which will adversely affect the child by filing a notice of cross-appeal with the clerk of the appellate courts and the trial court administrator together with proof of service on the prosecuting attorney. The notice of cross-appeal shall be filed within ten (10) days after service of notice of the appeal by the prosecuting attorney. Failure to serve the notice does not deprive the court of appeals of jurisdiction over a child's cross-appeal but is ground for such action as the court of appeals deems appropriate, including dismissal of the cross-appeal.

(Amended effective for all juveniles taken into custody and all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2003; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2008; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011.)

[For text of 21.05 to 21.07, see M.S. 2010, Volume 15]

Comment--Rule 21

An appeal may be taken by petitioning the Supreme Court of Minnesota for review pursuant to Minn. R. Civ. App. P. 117 or by petitioning for accelerated review pursuant to Minn. R. Civ. App. P. 118.

The scope of review shall be pursuant to Minn. R. Civ. App. P. 103.04.

Minn. R. Juv. Del. P. 21.03 subd 1(A) (7) and (10) includes the right to appeal a stayed sentence and the execution of a stayed sentence. See Minn. R. Crim. P. 27.04 subd 3(4) and 28.05 subd 2. An order continuing the matter without adjudication and imposing a disposition pursuant to Minnesota Statutes 2002, section 260B.198, subdivision 1, paragraph (a) or (b), is an appealable final order as is a subsequent order adjudicating the child and imposing a disposition pursuant to Minnesota Statutes 2002, section 260B.198, subdivision 1.

A child's representation by the public defender is governed by Minnesota Statutes, chapter 611. The public defender is not required to appeal from misdemeanor dispositions or adjudications, but may do so at its discretion.

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

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

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

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

Rule 22. Substitution of Judge

[For text of 22.01 to 22.04, see M.S. 2010, Volume 15]

Comment--Rule 22

This rule is modeled after Minn. R. Crim. P. 26.03 subd 14. The rule permits the child's counsel or prosecuting attorney to serve and file a notice to remove a judge as a matter of right without cause. Only one such removal as a matter of right is permitted to a party. Other removals must be for cause.

The right to a fair trial before an impartial tribunal is a fundamental due process requirement. See, e.g., Estes v. Texas, 381 U.S. 532, 85 S.Ct. 1628, 14 L.Ed.2d. 543 (1965). The Supreme Court in In re Murchison, 349 U.S. 133, 75 S.Ct. 623 (1955), explained the importance of an impartial tribunal: "Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness... [T]o perform its high function in the best way, 'justice must satisfy the appearance of justice.'" 349 U.S. at 136 citing Offutt v. United States, 348 U.S. 11, 14, 75 S.Ct. 11, 13 (1954). Moreover, the fact finder must make a determination based only on the evidence in the record in order to ensure effective appellate review. See, e.g., Patterson v. Colorado, 205 U.S. 454 (1907).

The appearance, if not the actuality, of neutral and unbiased fact-finding may be compromised if the judge has actual knowledge of the social history or prior court history of the child. See, e.g., In re Gladys R., 1 Cal.3d 855, 464 P.2d 127, 83 Cal. Rptr. 671 (1970) (reversible error for juvenile court to review social study report before jurisdictional hearing). The problem is especially acute in delinquency proceedings because juveniles, with

the exception of extended jurisdiction juveniles, do not have the right to a jury trial. McKeiver v. Pennsylvania, 403 U.S. 528, 91 S.Ct. 1976, 29 L.Ed. 647 (1970). Whenever a judge knows information that is not admissible at trial but is prejudicial to a child, the impartiality of the tribunal is open to question. A.B.A. Juvenile Justice Standards Relating to Adjudication, Standard 4.1 at 54. The problem of impartiality is particularly troublesome in juvenile court proceedings because the same judge typically handles the same case at different stages. For example, at a detention hearing, a judge may be exposed to a youth's social history file and prior record of police contacts and delinquency adjudications, all of which bear on the issue of appropriate pretrial placement. When the same judge is subsequently called upon to determine the admissibility of evidence in a suppression hearing and the guilt of the juvenile in the same proceeding, the juvenile's basic right to a fair trial by an impartial tribunal with a determination of guilt based on admissible evidence may be compromised. E.g., In re Welfare of J.P.L., 359 N.W.2d 622 (Minn. Ct. App. 1984).

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

Rule 30. Records

[For text of 30.01, see M.S. 2010, Volume 15]

30.02 Availability of Juvenile Court Records

Subdivision 1. By Statute or Rule. Juvenile Court records shall be available for inspection, copying and release as required by statute or these rules. Access to all reporter's tapes and electronic recordings shall be governed by the Rules of Public Access to Records of the Judicial Branch.

Subd. 2. No Order Required.

(A) *Court and Court Personnel.* Juvenile court records shall be available to the court and court personnel without a court order.

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

(1) the child's counsel and guardian ad litem appointed in the delinquency proceeding;

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

(C) *Prosecuting Attorney.* Juvenile court records shall be available for inspection, copying or release to the prosecuting attorney.

(D) *Other.* The juvenile court shall forward data to agencies and others as required by Minnesota Statute.

Subd. 3. Court Order Required.

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

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

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

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

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

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

(2) in the interests of public safety; or

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

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

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

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

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

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

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

(Amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight July 1, 2004; amended effective for guardians ad litem appointed in Minnesota's juvenile and family courts after 12 o'clock midnight January 1, 2005; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight September 1, 2005; amended effective for all juvenile delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2007; amended effective for all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011.)

[For text of Comment -- Rule 30, see M.S. 2010, Volume 15]