

STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8003
(formerly CX-01-926)

OFFICE OF
APPELLATE COURTS

NOV 19 2010

FILED

**PROMULGATION OF AMENDMENTS TO THE MINNESOTA
RULES OF JUVENILE DELINQUENCY PROCEDURE**

ORDER

In its report dated May 10, 2010, the Supreme Court Juvenile Delinquency Rules Committee recommended certain amendments to the Minnesota Rules of Juvenile Delinquency Procedure. By order dated May 17, 2010, this Court established a July 16, 2010, deadline for submitting written comments on the proposed amendments. The Supreme Court reviewed the proposed amendments, and the submitted comments, and is fully advised in the premises.

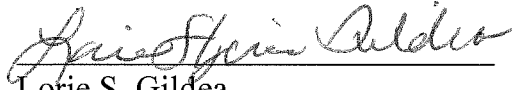
NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The attached amendments to the Minnesota Rules of Juvenile Delinquency Procedure are prescribed and promulgated for the regulation and procedure of juvenile delinquency matters in the courts of the State of Minnesota.
2. The attached amendments, with the exception noted below at paragraph 3, shall govern all delinquency actions commenced or children taken into custody after 12 o'clock midnight January 1, 2011.
3. The amendment adding a subdivision 3 to Rule 6.06 shall govern all delinquency actions commenced or children taken into custody after 12 o'clock midnight July 1, 2011.

4. The inclusion of committee comments and amendments to the comments is made for convenience and does not reflect court approval of the comments or the amendments to the comments.
5. The Juvenile Delinquency Rules Committee shall continue to serve and monitor said rules and amendments and to hear and accept comments for further changes, to be submitted to the Court from time to time.

DATED: November 19, 2010

BY THE COURT:


Lorie S. Gildea
Chief Justice

AMENDMENTS TO THE MINNESOTA RULES OF JUVENILE DELINQUENCY PROCEDURE

Note to publishers: Deletions are indicated by a line drawn through the word, and additions are underlined. New text that should be underlined in the final publication is indicated by a double underline.

1. Amend the Comments to Rule 3, paragraph 15, as follows:

In State v. Rubin, the court described the type of "penetrating and comprehensive examination" that must precede a "knowing and intelligent" waiver and strongly recommended the appointment of counsel "to advise and consult with the defendant as to the waiver." See also ABA Standards of Criminal Justice, Providing Defense Services, sections 5.7.3 (1980); Minn. R. Crim. P. ~~5.02~~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.

2. Amend the Comments Rule 3, paragraph 18, as follows:

Minn. R. Juv. Del. P. 3.06 prescribes the standard to be applied by the court in determining whether a child or the child's family is sufficiently indigent to require appointment of counsel. The standards and methods for determining eligibility are the same as those used in the Minn. R. Crim. P. ~~5.02~~5.04, subds. 3-5.

3. Amend Rule 4.01 as follows:

Rule 4.01 Search Warrants Upon Oral Testimony

Issuance of search warrants based on oral testimony is governed by Minnesota Rules of Criminal Procedure ~~33.06~~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.

4. **Amend Rule 6.05, subd. 3, as follows:**

Subd. 3. Motion to Dismiss for Lack of Probable Cause. The child may bring a motion to dismiss the charging document for lack of probable cause. The probable cause determination is governed by the procedure set out in Minnesota Rules of Criminal Procedure ~~11.03~~11.04.

5. **Add a new subdivision 3 to Rule 6.06 as follows:**

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.

6. **Add a new Rule 6.07 as follows:**

Rule 6.07 Dismissal by Prosecuting Attorney

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

7. **Add a new Rule 6.08 as follows:**

Rule 6.08 Dismissal by Court

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

8. **Amend the Comments to Rule 6, paragraph 4, as follows:**

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. ~~Certain offenses may be resolved without a court appearance by mailing or delivering to the court administrator a payable fine which has been predetermined by the court. Each judicial district may establish a list a minor offenses which may be settled by paying a fine. It is recommended that the list be made part of or considered by the district in establishing its dispositional criteria.~~

9. **Add a new subdivision 3 to Rule 13.03 as follows:**

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.

10. **Amend Rule 13.09 as follows:**

Rule 13.09 Findings

Within seven (7) days of the conclusion of the trial, the court shall findmake 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~~The order finding that the allegations of the charging document have been proved shall also state the child's name and date of birth; and the date and county where the offense was committed. ~~The court shall dismiss the charging document if the allegations have not been proved.~~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 followed up in reduced to writing within the seven (7) fifteen (15) days required herein. For good cause, the court may extend the time for filing written findings for an additional seven (7) days.

11. Amend Rule 15.02 as follows:

Rule 15.02 Timing

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

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

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

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

Subd. 2. Order. The court shall enter a dispositional order pursuant to ~~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.

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

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

Subd. 3. Delay. For good cause, the court may extend the time period to ~~enter a dispositional order~~ 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 for a child 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.

12. Amend Rule 16.01, subd. 1, by adding a clause (H) as follows:

Rule 16.01 Post-trial Motions

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

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

13. Amend Rule 16.01, subd. 3(A), as follows:

Subd. 3. Time for Motion.

(A) *Generally.* Notice of a motion for a new trial shall be served within fifteen (15) days after the ~~finding that the allegations of the charging document are proved~~ court's specific findings are made pursuant to Rule 13.09. The motion shall be heard within thirty (30) days after the ~~finding that the allegations of the charging document are proved~~ 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.

14. Amend Rule 17.04 as follows:

Rule 17.04 The Charging Document and Notice of Arraignment

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

15. Amend Rule 18.08, subd. 2(B), as follows:

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

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

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

Rules of Criminal Procedure ~~5.05~~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.

16. Amend the Comments to Rule 18, paragraph 3, as follows:

*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).*

17. Amend the Comments to Rule 18, paragraph 7, as follows:

*Much of the content of Minn. R. Juv. Del. P. 18.05, subd. 3 is modeled after Minn. R. Crim. P. ~~11.03~~11.04 and ~~18.06~~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. ~~11.03~~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).*

18. Amend the Comments to Rule 19, paragraph 2, as follows:

*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).*

19. Amend the Comments to Rule 19, paragraph 7, as follows:

*Much of the content of Minn. R. Juv. Del. P. 19.04, subd. 3 is modeled after Minn. R. Crim. P. ~~11.03~~11.04 and ~~18.06~~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. ~~11.03~~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).*

20. Amend Rule 20.01, subd. 4, as follows:

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 ~~on the issue of the child's competency to proceed~~ 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.

21. Amend Rule 20.02, subd. 7(D)(2), as follows:

(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 6(4)7.

22. Amend Rule 21.03, subd. 1, as follows:

Rule 21.03 Appeal by Child

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

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

~~Appeals from disposition or sentence shall only include matters which arose after adjudication or conviction. The appellate court may review any other matter as the interests of justice require. 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.~~

(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 pursuant to ~~Minnesota Statutes, section 260B.198, subdivisions 1 (a) or (b);~~

(3) adjudication and disposition in delinquency proceedings ~~pursuant to Minnesota Statutes, section 260B.198, subdivision 1;~~

(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.

23. Amend Rule 21.03, subd. 2(A), as follows:

Subd. 2. Procedure for Appeals.

(A) Orders Revoking Extended Jurisdiction Juvenile Status and Orders Revoking the Stayed Adult Sentence of an Extended Jurisdiction Juvenile. Probationer appeals under Rule 21.03, subdivision 1(A)(11) and (12) shall be governed by the procedure provided for appeal from a sentence by Minnesota Rules of Criminal Procedure 27.04, subdivision 3(5)3(4) and 28.05.

24. Amend Rule 21.03, subd. 2(B)(3)(c), as follows:

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

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

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

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

25. Amend Rule 21.04, subd. 3(B), as follows:

(B) Prosecutorial appeals under Rule 21.04, subdivision 1(C) and (D) shall be governed by the procedure provided for appeal from a sentence by Minnesota Rules of Criminal Procedure 27.04, subdivision ~~3(5)~~3(4) and 28.05.

26. Amend the Comments to Rule 21, paragraph 3, as follows:

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(5)~~3(4) and 28.05, subd. (2). An order continuing the matter without adjudication and imposing a disposition pursuant to Minnesota Statutes, section 260B.198, subds. 1(a) or (b)(2002) is an appealable final order as is a subsequent order adjudicating the child and imposing a disposition pursuant to Minnesota Statutes, section 260B.198, subd. 1 (2002).

27. Amend the Comments to Rule 22, paragraph 1, as follows:

This rule is modeled after Minn. R. Crim. P. 26.03, subd. ~~13~~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.

28. Amend Rule 30.02, subd. 1, as follows:

Rule 30.02 Availability of Juvenile Court Records

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