

FILED

June 28, 2018

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8003

**ORDER PROMULGATING AMENDMENTS TO THE
RULES OF JUVENILE DELINQUENCY PROCEDURE**

In an order filed June 28, 2018, we adopted the recommendations of a joint workgroup that evaluated the use of mental-health evaluations in criminal proceedings, and promulgated amendments to the Rules of Criminal Procedure to clarify the procedures regarding those evaluations in criminal proceedings. *See Order Promulgating Amendments to the Minn. R. of Crim. P.*, No. ADM10-8049 (Minn. filed June 28, 2018). The joint workgroup also recommended that similar, conforming, amendments be made to comparable rules in the Rules of Juvenile Delinquency Procedure, in order to maintain consistency in the procedures governing mental-health evaluations.

For the reasons explained in our order promulgating the amendments to the Rules of Criminal Procedure, we agree that conforming amendments to the Rules of Juvenile Delinquency Procedure, to address mental-health evaluations in the proceedings governed by those rules, are appropriate and will provide helpful guidance to the parties and the district courts.

Based on all of the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the attached amendments to the Rules of Juvenile Delinquency Procedure be, and the same are, prescribed and promulgated to be effective

as of September 1, 2018. The rules as amended shall apply to all cases filed on or after the effective date.

Dated: June 28, 2018

BY THE COURT:

A handwritten signature in black ink, appearing to read "Lorie S. Gildea".

Lorie S. Gildea
Chief Justice

THISSEN, J., not having been a member at the time of submission, took no part in the consideration or decision of this matter.

AMENDMENTS TO THE RULES OF JUVENILE DELINQUENCY PROCEDURE

[Note: In the following amendments, deletions are indicated by a line drawn through the words and additions are indicated by a line drawn under the words.]

Rule 10.05. Disclosure by Child

Subdivision 1. Information Subject to Disclosure Without Order of Court. After a charging document is filed, if the prosecuting attorney makes a request, the child's counsel shall make the following disclosures within five (5) days of the receipt of the request.

* * *

(C) Notice of Defense, Witnesses for the Child and Record.

- (1) **Notice of Defenses.** The child's counsel shall inform the prosecuting attorney in writing of any defense, other than that of a denial, on which the child intends to rely at the trial, including but not limited to the defenses of self-defense, entrapment, duress, alibi, double jeopardy, statute of limitations, collateral estoppel, a defense pursuant to Minnesota Statutes, section 609.035 or intoxication. Notice of a defense of mental illness or ~~mental deficiency~~cognitive impairment is governed by Rule 20.02, subdivision 1.

* * *

RULE 20. CHILD INCOMPETENT TO PROCEED AND DEFENSE OF MENTAL ILLNESS OR ~~MENTAL DEFICIENCY~~COGNITIVE IMPAIRMENT

Rule 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~~cognitive impairment.

* * *

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:

* * *

(D) *Report of Examination.* Within sixty (60) days from the order for examination, or earlier if directed by the court, the examiner shall file a written report with the court, and the court shall provide a copy to 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~~cognitively impaired, 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~~cognitive impairment.

* * *

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

* * *

- (B) *Finding of Incompetency.* If the offense is a misdemeanor, juvenile petty offense, 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~~cognitively impaired so as to be incapable of understanding the proceedings or participation in the defense, the court shall order any existing civil commitment continued. If the child is not under commitment, the court may direct civil commitment proceedings be initiated, and the child confined in accordance with the provisions of the Minnesota Commitment Act, Chapter 253B.

* * *

Rule 20.02. Defense of Mental Illness or ~~Mental Deficiency~~Cognitive Impairment at the Time of the Offense

Subdivision 1. When Raised.

- (A) If the child intends to raise mental illness or ~~mental deficiency~~cognitive impairment as a defense, the child's counsel shall advise the court and prosecuting attorney in writing before 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~~cognitive impairment 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~~cognitive impairment 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~~cognitive impairment;
- (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~~Cognitive Impairment Examinations.

- (A) *Order for Disclosure.* If a child raises the defense of mental illness or ~~mental deficiency~~cognitive impairment, 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~~cognitive impairment of the child and relevant to the issue of the defense of mental illness or ~~mental deficiency~~cognitive impairment. If the copies of the reports and records are furnished to the court for in camera review, 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~~cognitive impairment.

Subd. 5. Report of Examination. At the conclusion of the examination, a written report of the examination shall be filed with the court, and the court shall provide a copy to the prosecuting attorney and to the child's counsel. The report shall not be disclosed to the public except by court order. The report of the examination shall contain:

- (A) A diagnosis of the child's mental illness or ~~mental deficiency~~cognitive impairment as requested by the court;
- (B) If so directed by the court, an opinion as to whether, because of mental illness or ~~deficiency~~cognitive impairment, 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 cognitive impairment.

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 cognitive impairment an issue in the case. If the child's mental illness or mental deficiency cognitive impairment 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 Rules 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 Cognitive Impairment~~.* 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 cognitive impairment, 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 cognitive impairment 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 cognitive impairment.
- (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 cognitive impairment.
- (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~~cognitive impairment, the ~~defense of mental illness or mental deficiency~~cognitive impairment 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~~cognitive impairment 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~~cognitive impairment; 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~~Cognitive Impairment Not Proven.* After a finding of guilty and the defense of mental illness or ~~deficiency~~cognitive impairment not proven, the court shall schedule and conduct a disposition hearing. The issues of the child's mental illness or ~~deficiency~~cognitive impairment shall be considered by the court at disposition.
- (B) *Mental Illness or ~~Mental Deficiency~~Cognitive Impairment Proven.* When a child is found not guilty by reason of mental illness or ~~mental deficiency~~cognitive impairment,
 - (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.