

STATE OF MINNESOTA

IN SUPREME COURT

CX-01-926


**ORDER ESTABLISHING DEADLINE FOR SUBMITTING
COMMENTS ON PROPOSED AMENDMENTS
TO THE RULES OF JUVENILE PROCEDURE**

The Supreme Court Juvenile Delinquency Rules Committee filed a report on December 12, 2003, recommending amendments to the Rules of Juvenile Procedure. This court will consider the proposed amendments without a hearing after soliciting and reviewing comments on the report. A copy of the report is annexed to this order.

IT IS HEREBY ORDERED that any individual wishing to provide a written statement in support or opposition to the proposed amendments shall submit fourteen copies of such statement addressed to Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, Minnesota 55155, on or before February 27, 2004.

Dated: *Dec. 23, 2003*

BY THE COURT:


Kathleen A. Blatz
Chief Justice

OFFICE OF
APPELLATE COURTS

DEC 23 2003

FILED

**REPORT AND PROPOSED AMENDMENTS TO THE
MINNESOTA RULES OF JUVENILE PROCEDURE
(JUVENILE DELINQUENCY RULES)**

**MINNESOTA SUPREME COURT
JUVENILE DELINQUENCY RULES COMMITTEE**

CX-01-926

December 12, 2003

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Honorable Helen Meyer
Supreme Court Liaison

Kelly Lyn Mitchell
Staff Attorney

INTRODUCTION

The Juvenile Delinquency Rules Committee met in 2003 pursuant to the Minnesota Supreme Court's fourfold charge to:

1. Review case law relating to the Juvenile Delinquency Rules;
2. Review federal and state statutes relating to the Juvenile Delinquency Rules;
3. Monitor implementation of and consider requests for revision to the Juvenile Delinquency Rules; and
4. Submit to the Supreme Court recommendations for necessary revision of the Juvenile Delinquency Rules.

The following report summarizes the issues considered by the Committee and the recommended changes to the Juvenile Delinquency Rules. The report is organized by topic.

SUMMARY OF TECHNICAL AMENDMENTS

The Committee noted several inconsistencies in language contained in the rules. The following is a summary of the technical or terminology changes recommended by the Committee. These recommended changes do not alter the meaning or application of the rules.

- Rule 1.01 states: "Reference in these rules to "child's counsel" includes the child who is proceeding pro se." In 2002, the Committee recommended, and the Supreme Court adopted, the elimination of this language in two rules in which it was duplicated, though the language was retained in many of the comments. The Committee identified several other places in the comments where this language would be helpful to the practitioner and recommends its addition in those locations. In addition, the Committee recommends replacing "child" with "child's counsel" in Rule 23.02 to be consistent with the usage of that term in other rules.
- The 2002 Committee report also included recommendations to replace the term "delinquency petition" with "charging document" where intended to refer to tab charges and citations, and recommendations to make the rules gender neutral. The Committee identified some terminology that was not changed in 2002 and recommends modifying the comments to Rule 5 and Rule 8.04 for consistency.

SUMMARY OF SUBSTANTIVE AMENDMENTS

BIFURCATING THE JUVENILE DELINQUENCY AND JUVENILE PROTECTION RULES

The Juvenile Protection Rules Committee has recommended separating the juvenile protection rules from the delinquency rules. Should this recommendation be approved, the Committee recommends that the title of Rules 1-31 be amended to the "Minnesota Rules of

Juvenile Delinquency Procedure” and that Rule 1.01 be amended to eliminate reference to the juvenile protection matters now contained in Rules 37 through 82.

REVOCAATION PROCEEDINGS IN EXTENDED JURISDICTION JUVENILE CASES

The process and law that apply to revocation proceedings in an extended jurisdiction juvenile (EJJ) case was set forth in State v. B.Y., 659 N.W.2d 763 (Minn. 2003). In that case, the Court ruled that the Austin¹ factors must be considered when determining whether or not to revoke the stayed prison sentence of an EJJ probationer. The court directed the Committee to review Rule 19.11, subd. 3 (then Rule 19.09, subd. 3) and propose amendments consistent with its holding. The Committee recommends inclusion of the Austin factors with respect to the decision whether to execute the adult stayed prison sentence after the child’s EJJ probation status has been revoked. The Committee did not recommend any changes to the comments to the Rule in light of the recently decided case and proposed amendments.

CLARIFICATION OF THE NOTICE TO REMOVE PROCEDURE

During the public comment period for the 2002 proposed amendments, the court received comments regarding the need to clarify the timing requirements of a request to remove a judge pursuant to Rule 22.03, subd. 1. The Committee reviewed the question and agreed that the rule, as it is currently drafted, is unclear. The difficulty occurs due to the differences in assigning attorneys and judges in juvenile delinquency cases throughout the state. In some courts, counsel is assigned for the child prior to the initial appearance in court. In other courts, counsel is not appointed until the day the child first appears or following that first appearance. Similarly, in some counties a judge is assigned to a specific case when it is filed whereas in other counties the case may be heard by a different judge at each appearance.

The overriding concern was to draft a rule that can accommodate the differences between counties yet adhere to the policy that juvenile cases be processed in an expeditious manner. The Committee looked to the adult criminal rule for comparison and guidance, see Minn. R. Crim. P. 26.03, subd. 13(4), and recommends that Rule 22.03, subd. 1 be amended to more closely mirror the adult rule to resolve the confusion.

AVAILABILITY OF JUVENILE COURT RECORDS TO PROSECUTING ATTORNEY

The Minnesota County Attorney’s Association requested modification of Rule 30.02 to allow access to juvenile records for the purpose of identifying predicate offenses that would serve as a basis for enhancing the penalty for subsequent crimes committed by the same person. The rule in its current form permits a prosecuting attorney free access to information in juvenile delinquency files where there has been some court action within the preceding year. If there has been no court action on the file for one year or more, the court may require an ex-parte showing that inspection or copying of the court records is necessary and in the best interest of the child.

This rule is being administered differently in the courts in this state. Some courts permit inspection or copying of inactive juvenile files by the prosecutor on request regardless of the

¹ From State v. Austin, 295 N.W.2d 246 (Minn. 1980).

one-year time limit. Other courts strictly adhere to the timing in the Rule and require the prosecuting attorney to prepare and file a formal request or motion to review the inactive file, which is then reviewed by a judge.

The Committee considered this issue in 2002. At that time, the Committee was concerned about privacy issues for the juvenile and the difficulty of court administration in determining which adjudications would qualify as a predicate offense. Based upon comments submitted during the public comment period for the 2002 recommendations, Justice Meyer requested that the Committee continue its review of the issue this year.

The County Attorney's Association prepared a list of predicate offenses that could be used by court administration to identify the relevant files for the prosecuting attorney, and the Committee considered amending the rule to allow access to juvenile files in which there was an adjudication for an enumerated predicate offense. This list would have required review and possible modification annually due to frequent legislative changes.

Court administrators were asked to provide input regarding the feasibility of screening cases for predicate offenses using a list of offenses revised annually. The court administrators were seriously concerned that the suggested modification of the rule would be excessively burdensome to administer. Concern was also expressed about potential liability of court administrators for mistakenly permitting access to a juvenile file.

In addition, the Committee noted that county attorneys in different locations have varying access to juvenile court information. County attorneys in those counties using TCIS can access the juvenile's entire history electronically, whereas those in counties not using TCIS may not have the same ability. With the advent of MNCIS, county attorneys will be able to electronically access juvenile dispositions statewide. For these reasons, the Committee thought the current time limitation in the rule might be outdated.

After much discussion, the Committee concluded that juvenile files should be available for inspection, copying or release to a prosecuting attorney upon request without time limitation. Therefore, the Committee recommends that Rule 30.02 be amended in that manner. This avoids burdening court administration and permits prosecuting attorneys to access information necessary to appropriately charge an individual prior to the first court appearance on a new offense. Although privacy is still a concern, the Committee recognizes there are other avenues to prevent inappropriate use of the information.

VENUE

The legislature amended the venue statute for juvenile delinquency, juvenile petty offenders and juvenile traffic offenders in 2003, effective August 1, 2003. See Minn. Stat. §§ 260B.105, subd. 1, 2; 260B.143, subd. 1. Prior to the amendments, the court had discretion to transfer a proceeding brought under Minn. Stat. § 260B.101 at any time in the proceeding. The practice in most, but not all courts, was to have the juvenile's first appearance in the juvenile's county of residence. If the juvenile entered a not guilty plea, the case was transferred to the county where the alleged offense occurred for trial. The case could then be transferred

back to the county of residence or dispositioned in the county where the offense occurred. The judge of the receiving court could accept the findings of the transferring court or could direct the filing of a new petition and hear the case anew.

The amended statutes require the child's first appearance and all proceedings up to disposition take place in the county where the alleged offense occurred. The court may transfer the case to the county of the child's residence for disposition. The amendments also eliminate the language permitting the judge in the receiving county to disregard the transferring court's findings and hear the matter anew. Minn. Stat. § 260B.105, subd. 2.

Currently, there is no rule regarding venue in juvenile delinquency, juvenile petty offender or juvenile traffic offender matters. The Committee discussed various practices between courts in this state and the application of the new statute. The Committee considered drafting a venue rule. However, the consensus of the Committee was to wait and review the effect of the statutory changes after the courts, attorneys, and juveniles have had more experience with the amended law. Therefore, the Committee has not made a recommendation to add a venue rule at this time.

APPLICATION OF THE COURT OF APPEAL'S COMMENTS REGARDING RECUSAL

The comments to Rules 12 and 22 refer to concerns raised by the Court of Appeals in In re Welfare of J.P.L., 359 N.W.2d 622 (Minn. Ct. App. 1985). In that case, the Court of Appeals questioned whether the juvenile delinquency rules should mandate the recusal of a judge in a juvenile delinquency case following a suppression hearing. These two comments discuss the concern that a judge who has granted a suppression motion may have difficulty in setting aside this information in making the final determination of guilty or not guilty.

As currently drafted, the comments refer to the case cited above. Several members of the Committee felt strongly that more direct language should be included in the comments. The additional sentence proposed was "*If the judge orders any evidence suppressed, the better procedure is to assign the case to another juvenile judge to hear on the merits,*" to be followed by the citation to the case. After much debate, the Committee initially adopted the proposed amendment to the two comments.

The Administration Committee of the Conference of Chief Judges (CCJ) reviewed the proposal in October. The judges were unanimous in their opposition to the proposed change. The majority of the courts in Minnesota have one judge assigned to hear cases. Often, especially in less serious offenses, the suppression hearing is combined with the trial. If a judge grants a suppression motion and then recuses, the case will be significantly delayed before a new judge can be assigned and travel to the county to hear the matter.

Based on this feedback, the Committee reconsidered the proposals. Although the Committee concurs the better practice in these matters is to reassign the case for trial, this requirement is not currently in the rule. The language in J.P.L. is dicta, and the majority of the courts cannot easily and timely implement this proposal. Therefore, the final recommendation of the Committee is to leave the comments to Rules 12 and 22 as originally drafted and enacted.

ACCESS TO JUVENILE RECORDS BY SHERIFFS FOR GUN PERMIT APPLICATIONS

The Committee received a request from one of the judges on the CCJ Administration Committee to consider drafting a rule to permit sheriffs to access juvenile delinquency records for the purpose of screening gun permit applications. The Committee opposed this suggestion. Instead, the consensus of the Committee was that the sheriff should put the burden on the applicant to sign a release that would allow access to the individual's juvenile records for this purpose.

Respectfully Submitted,

JUVENILE DELINQUENCY
RULES COMMITTEE

PROPOSED AMENDMENTS TO THE RULES OF JUVENILE PROCEDURE

1. If the proposal to bifurcate the Juvenile Protection and Juvenile Delinquency Rules is approved, rename Rules 1-31 of the Minnesota Rules of Juvenile Procedure as the Minnesota Rules of Juvenile Delinquency Procedure and delete the second paragraph of rule 1.01 as follows:

Rules 1 through 31 govern the procedure in the juvenile courts of Minnesota for all delinquency matters as defined by Minnesota Statutes, section 260B.007, subdivision 6, juvenile petty matters as defined by Minnesota Statutes, section 260B.007, subdivision 16 and juvenile traffic matters as defined by Minnesota Statutes, section 260B.225. Procedures for juvenile traffic and petty matters are governed by Rule 17.

~~Juvenile protection matters, including truants and runaways, are governed by the procedures in Rules 37 through 82.~~

Where these rules require giving notice to a child, notice shall also be given to the child's counsel if the child is represented. Reference in these rules to "child's counsel" includes the child who is proceeding pro se.

Where any rule obligates the court to inform a child or other person of certain information, the information shall be provided in commonly understood, everyday language.

In cases involving an Indian child, which may be governed by the Indian Child Welfare Act, 25 U.S.C.A. Chapter 21, sections 1901-1963, these rules shall be construed to be consistent with that Act. Where the Minnesota Indian Family Preservation Act, Minnesota Statutes, sections 260.751 through 260.835 applies, these rules shall be construed to be consistent with that Act.

2. Rule 5 Comments

Amend the 7th paragraph of the comments to Rule 5 as follows:

Minn. R. Juv. P. 5.04, subd. 3 is based upon Minnesota Statutes, section 260B.176,

*subd. 2 (2002). The statute provides for an extension of the time for a detention hearing for a child detained in an adult detention facility outside of a standard metropolitan statistical area county only under two circumstances: 1) where the adult facility in which the child is detained is located where conditions of distance to be traveled or other ground transportation do not allow for court appearances within 24 hours (with the delay not to exceed 48 hours); and 2) where "conditions of safety exist" including adverse life-threatening weather conditions which do not allow for reasonably safe travel. The time for appearance may be delayed until 24 hours after the time that conditions allow for reasonably safe travel. Minnesota Statutes, section 260B.176, subd. 2 (2002). See also 42 U.S.C.A., section 5633(a)(13) and (14) (1995). Even though the statute permits an extension of the time for a detention hearing in such circumstances, the extension may be granted only if the prosecuting attorney has filed a ~~delinquency petition and a motion for certification~~ charging document within twenty-four (24) hours of the child being taken into custody, excluding Saturdays, Sundays and legal holidays. Minn. Juv. P. 5.04, subd. 3(A). If the court determines after the detention hearing that the child should remain detained, the child shall be detained in an appropriate juvenile facility. *Id.* See also 42 U.S.C.A. section 5633(a)(14) (1995).*

3. Rule 8.04. Plea of Guilty

Amend Rule 8.04, subd. 1(D)(1) as follows:

(D) *Right to Counsel.* If a child charged with a misdemeanor remains without counsel or with only standby counsel, that the child understands the continued right to be represented by counsel, and understands that counsel:

(1) could give the child further information and advice on ~~his~~ the child's rights and on the choice to plead guilty or not guilty to the ~~charges~~ offense(s) in the ~~petition~~ charging document; and

4. Rule 10 Comments

Insert a new paragraph at the end of the comments to Rule 10 as follows:

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

5. Rule 12 Comments

Insert a new paragraph at the end of the comments to Rule 12 as follows:

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

6. Rule 13 Comments

Insert a new paragraph at the end of the comments to Rule 13 as follows:

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

7. Rule 18 Comments

Insert a new paragraph at the end of the comments to Rule 18 as follows:

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

8. Rule 19.11. Revocation

Amend Rule 19.11, subd. 3 as follows:

Subd. 3. Revocation Hearing.

(A) *Hearing Procedures.* The hearing shall be held in accordance with the provisions of Rule 19.11, subdivisions 2(A)(1), (2), (3), and (4).

(B) *Finding of No Violation of Terms and Conditions of Disposition.* If the court finds that a violation of the terms and conditions of the disposition order was not established by clear and convincing evidence, the revocation proceedings shall be dismissed, and the probationer's stayed sentence shall be continued under conditions ordered by the court.

(C) *Finding of Violation of Terms and Conditions of Disposition.*

(1) If the court finds upon clear and convincing evidence that any provisions of the disposition order were violated, or if the probationer admits the violation, the court may revoke the probationer's extended jurisdiction juvenile status. Upon revocation of extended jurisdiction juvenile status, the court shall treat the offender as an adult and may order any of the adult sanctions authorized by Minnesota Statutes, section 609.14, subdivision 3.

2) To execute the stayed prison sentence after revocation of extended jurisdiction juvenile status, the court must make written findings that:

(a) one or more conditions of probation was violated;

(b) the violation was intentional or inexcusable; and

(c) the need for confinement outweighs the policies favoring probation.

~~(3) If the court finds upon clear and convincing evidence that any provisions of the disposition order were violated, or if the probationer admits the violation, and the extended jurisdiction juvenile conviction was for an offense with a presumptive prison sentence or the probationer used a firearm, and the court has made findings pursuant to clause (2), the court shall order the execution of the sentence or make~~ unless the court makes written findings indicating the mitigating factors that justify continuing the stay.

(D) *Record of Findings.* A verbatim record shall be made of the proceedings at the revocation hearing and in any contested hearing the court shall make written findings of fact on all disputed issues including a summary of the evidence relied upon and a statement of the court's reasons for its determination.

(E) *Appeal.* The probationer or the prosecuting attorney may appeal from the court's decision according to the procedure provided for appeal from a sentence by the Minnesota Rules of Criminal Procedure 28.05.

9. Rule 19 Comments

Insert a new paragraph at the end of the comments to Rule 19 as follows:

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

10. Rule 22.03. Notice to Remove

Amend Rule 22.03, subd. 1 as follows:

Subdivision 1. Service and Filing. The child's counsel or the prosecuting attorney may serve on the other parties and file with the court administrator a notice to remove the judge assigned to a trial or hearing. The notice shall be served and filed within seven (7) days after the ~~party~~child's counsel or the prosecuting attorney receives written notice, or oral notice in court on the record, of which judge is to preside at the trial or hearing but, in any event, ~~not earlier than seven (7) days after the initial hearing and assignment of counsel for the child and~~ not later than the commencement of the trial or the hearing.

11. Rule 22 Comments

Insert a new paragraph at the end of the comments to Rule 22 as follows:

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

12. Rule 23.02. Objection to Assignment of Referee

Amend Rule 23.02 as follows:

The child's counsel or the prosecuting attorney may object to a referee presiding at a hearing. This objection shall be in writing and filed with the court within three (3) days after being informed that the matter is to be heard by a referee or the right to object is waived. The court may permit the filing of a written objection at any time. After the filing of an objection, a judge shall hear any motion and preside at any hearing.

14. Rule 26 Comments

Insert comments to Rule 26 as follows:

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

15. Rule 29 Comments

Insert comments to Rule 29 as follows:

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

16. Rule 30.02. Availability of Juvenile Court Records

Amend Rule 30.02, subd. 2(C) as follows:

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

18. Rule 30 Comments

Insert a new paragraph at the end of the comments to Rule 30 as follows:

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