

Rule 15. Delinquency Disposition**15.01 Generally**

Subdivision 1. Findings on Charges. All references in this rule to findings that allegations in the charging document have been proved include findings pursuant to a plea of guilty by the child under Rule 8.04 and findings after trial pursuant to Rule 13.09.

Subd. 2. Application. This rule applies to delinquency dispositions. Rule 17 governs dispositions for juvenile petty offenses and juvenile traffic offenses. Rule 19 provides for sentence and disposition in extended jurisdiction juvenile cases.

(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.)

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 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.

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 order a continuance and direct the court administrator to transfer the file to the juvenile court in 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, except that case records and documents transferred electronically from one county to another within the court's case management system need not be certified. 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; amended effective July 1, 2015.)

15.03 Predisposition Reports

Subdivision 1. Investigations and Evaluations. The court may order an investigation of the personal and family history and environment of the child, and medical, psychological or chemical dependency evaluations of the child:

(A) at any time after the charges in the charging document have been proved; or

(B) with the consent of the child, child's counsel, if any, and the parent(s), legal guardian or legal custodian of the child, before the charges in the charging document have been proved.

Subd. 2. Placement. With the consent of the child at any time or without consent of the child after the delinquency charges of a charging document pursuant to Minnesota Statutes, section 260B.007, subdivision 6, paragraph (a), clause (1) or (2), have been proved, the court may place the child with the consent of the Commissioner of Corrections in an institution maintained by the Commissioner of Corrections for the detention, diagnosis, custody and treatment of persons adjudicated to be delinquent in order that the investigation and evaluations may be conducted pursuant to Rule 15.03, subdivision 1.

Subd. 3. Advisory. The court shall advise the child, the child's counsel, the prosecuting attorney and the child's parent(s), legal guardian or legal custodian and their counsel present in court that a predisposition investigation is being ordered, the nature of the evaluations to be included and the date when the reports resulting from the investigation are to be filed with the court.

Subd. 4. Filing and Inspection of Reports. The person making the report shall file the report three (3) days prior to the time scheduled for the disposition hearing and the reports shall be available for inspection and copying by the child, the child's counsel, the prosecuting attorney and counsel for the parent(s), legal guardian or legal custodian of the child. The report shall not be disclosed to the public except by court order.

(Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12 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 July 1, 2015.)

15.04 Hearing

Subdivision 1. Procedure. Disposition hearings shall be separate from the hearing at which the charges are proved and may be held immediately following that hearing. Disposition hearings shall be conducted in a manner designed to facilitate opportunity for all participants to be heard. The child and the child's counsel, if any, shall appear at all disposition hearings. The child's parents and their counsel, if any, may also participate in the hearing. The child has the right of allocution at the disposition hearing, prior to any disposition being imposed.

Subd. 2. Evidence. The court may receive any information, except privileged communication, that is relevant to the disposition of the case including reliable hearsay and opinions. Anyone with the right to participate in the disposition hearing pursuant to Rule 2 may call witnesses, subject to

cross-examination, regarding an appropriate disposition and may cross-examine any persons who have prepared a written report relating to 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.)

15.05 Dispositional Order

Subdivision 1. Adjudication and Disposition. On each of the charges found by the court to be proved, the court shall either:

(A) adjudicate the child delinquent pursuant to Minnesota Statutes, section 260B.198, subdivision 1; or

(B) continue the case without adjudicating the child delinquent pursuant to Minnesota Statutes, section 260B.198, subdivision 7.

The adjudication or continuance without adjudication shall occur at the same time and in the same court order as the disposition.

Subd. 2. Considerations; Findings.

(A) The dispositional order made by the court shall contain written findings of fact to support the disposition ordered and shall set forth in writing the following information:

(1) why public safety and the best interests of the child are served by the disposition ordered;

(2) what alternative dispositions were recommended to the court and why such recommendations were not ordered; and

(3) if the disposition changes the place of custody of the child:

(a) the reasons why public safety and the best interest of the child are not served by preserving the child's present custody; and

(b) suitability of the placement, taking into account the program of the placement facility and assessment of the child's actual needs.

(B) When making a disposition, the court shall consider whether a particular disposition will serve established principles of dispositions, including but not limited to:

(1) Necessity. It is arbitrary and unjust to impose a disposition that is not necessary to restore law abiding conduct. Considerations bearing on need are:

(a) Public Safety. The risk to public safety, taking into account:

(i) the seriousness of the alleged offense in terms of community protection, including the existence of any aggravating factors recognized by the Minnesota Sentencing Guidelines, the use of a firearm, and the impact on any victim;

(ii) the culpability of the child in committing the alleged offense, including the level of the child's participation in planning and carrying out the offense and the existence of any mitigating factors recognized by the Minnesota Sentencing Guidelines;

(iii) the child's prior record of delinquency;

(iv) the child's programming history, including the child's past willingness to participate meaningfully in available programming; and

(b) Proportionality. The principle that the disposition be proportional, that is, the least restrictive action consistent with the child's circumstances.

(2) Best Interests. A disposition must serve the best interests of the child, but this does not supersede the requirement that the disposition be necessary. The promise of benefits in a disposition, or even the suggestion that a particular disposition is best for the child, does not permit a disposition that is not necessary.

(3) Out-of-Home Placement. Public policy mandates that the best interests of the child are normally served by parental custody. Where an out-of-home placement is being considered, the placement should be suitable to the child's needs. A placement that is not suited to the actual needs of the child cannot serve the child's best interests.

(4) Sanctions. Sanctions, such as post-adjudication placement in a secure facility, are appropriate where such measures are necessary to promote public safety and reduce juvenile delinquency, provided that the sanctions are fair and just, recognize the unique characteristics and needs of the child and give the child access to opportunities for personal and social growth. In determining whether to order secure placement, the court shall consider the necessity of protecting the public, protecting program residents and staff, and preventing juveniles with histories of absconding from leaving treatment programs. Other factors that may impact on what sanctions are necessary include: any prior adjudication for a felony offense against a person, prior failures to appear in court, or prior incidents of running away from home.

(5) Local Dispositional Criteria. The disposition should reflect the criteria used for determining delinquency dispositions in the local judicial district.

Subd. 3. Duration. A dispositional order transferring legal custody of the child pursuant to Minnesota Statutes, section 260B.198, subdivision 1, clause (3), shall be for a specified length of time. The court may extend the duration of a placement but only by instituting a modification proceeding pursuant to Rule 15.08. Orders for probation shall be for an indeterminate length of time unless otherwise specified by the court and shall be reviewed by the court at least annually.

Subd. 4. Continuance without Adjudication.

(A) *Generally.* When it is in the best interests of the child and not inimical to public safety to do so, the court may continue the case without adjudicating the child. The court may not grant a continuance without adjudication where the child has been designated an extended jurisdiction juvenile.

(B) *Child Not in Detention.* If the child is not being held in detention, the court may continue the case without adjudication for a period not to exceed one hundred eighty (180) days from the date of disposition. The court may extend the continuance for an additional successive period not to exceed one hundred eighty (180) days with the consent of the prosecutor and only after the court has reviewed the case and entered its order for the additional continuance without a finding of delinquency.

(C) *Child in Detention.* If the child is held or is to be held in detention, the court may continue the case without adjudication and enter an order to hold the child in detention for a period not to exceed fifteen (15) days from the date of disposition. If the child is in detention, this continuance must be for the purpose of completing any consideration, or any investigation or examination ordered pursuant to Rule 15.03, subdivision 1. The court may extend this continuance and enter an

order to hold the child in detention for an additional successive period not to exceed fifteen (15) days.

(D) *Dispositions During Continuance.* During any continuance without adjudication of delinquency, the court may enter a disposition order pursuant to Minnesota Statutes, section 260B.198, subdivision 1, except clause (4).

(E) *Adjudication after Continuance.* Adjudicating a child for an offense after initially granting a continuance without adjudication is a probation revocation and must be accomplished pursuant to Rule 15.07.

(F) *Termination of Jurisdiction.* A probation revocation proceeding to adjudicate the child on any allegation initially continued without adjudication must be commenced within the period prescribed by Rule 15.05, subdivision 4(B) or (C), or juvenile court jurisdiction over the charges terminates.

(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 December 1, 2012; amended effective July 1, 2015).

15.06 Informal Review

The court shall review all disposition orders, except commitments to the Commissioner of Corrections, at least every six (6) months.

If, upon review, the court finds there is good cause to believe a modification of the disposition is warranted under Rule 15.08, subdivision 8, the court may commence a modification proceeding pursuant to Rule 15.08.

(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.)

15.07 Probation Violation

Subdivision 1. Commencement of Proceedings. Proceedings for revocation of probation may be commenced based upon a written report showing probable cause to believe the juvenile has violated any conditions of probation. Based upon the report, the court may issue a warrant as provided by Rule 4.03, or the court may schedule a review hearing and provide notice of the hearing as provided in Rule 25. If the juvenile fails to appear in response to a summons, the court may issue a warrant.

(A) *Contents of Probation Violation Report.* The probation violation report and supporting affidavits, or written statements signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, if any, shall include:

- (1) the name, date of birth and address of the child;
- (2) the name and address of the child's parent(s), legal guardian, or legal custodian;
- (3) the underlying offense or offenses and date(s) of offense for which violation of probation is alleged; and
- (4) a description of the surrounding facts and circumstances upon which the request for revocation is based.

(B) *Notice.* The court shall give notice of the admit/deny hearing on the probation violation to all persons entitled to notice pursuant to Rule 25.

Subd. 2. Detention Hearing. Detention pending a probation violation hearing is governed by Rule 5.

Subd. 3. Admit/Deny Hearing. The child shall either admit or deny the allegations of the probation violation report at the admit/deny hearing.

(A) *Timing.* The admit/deny hearing shall be held:

- (1) for a child in custody, at or before the detention hearing; or
- (2) for a child not in custody, within a reasonable time of the filing of the motion.

(B) *Advisory.* Prior to the child admitting or denying the violation, the court shall advise the child of the following:

(1) that the child is entitled to counsel appointed at public expense at all stages of the proceedings;

(2) that, unless waived, a revocation hearing will be commenced to determine whether there is clear and convincing evidence that the child violated a dispositional order of the court and whether the court should change the existing dispositional order because of the violation;

(3) that before the revocation hearing, all evidence to be used against the child shall be disclosed to the child and the child shall be provided access to all official records pertinent to the proceedings;

(4) that at the hearing, both the prosecuting attorney and the child shall have the right to offer evidence, present arguments, subpoena witnesses, and call and cross-examine witnesses. Additionally, the child shall have the right at the hearing to present mitigating circumstances or other reasons why the violation, if proved, should not result in revocation; and

(5) that the child has the right of appeal from the determination of the court following the revocation hearing.

(C) *Denial.* If the child denies the allegations, the matter shall be set for a revocation hearing which shall be held in accordance with the provisions of Rule 15.07, subdivision 4.

Subd. 4. Revocation Hearing.

(A) *Generally.* At the hearing, both the prosecuting attorney and the child shall have the right to offer evidence, present arguments, subpoena witnesses, and call and cross-examine witnesses, provided, however, that the child may be denied confrontation by the court when good cause is shown that a substantial risk of serious harm to others would exist if it were allowed. Additionally, the child shall have the right at the hearing to present mitigating circumstances or other reasons why the violation, if proved, should not result in revocation.

(B) *Timing.* The revocation hearing shall be held within seven (7) days after the child is taken into custody or, if the child is not in custody, within a reasonable time after the filing of the denial. If the child has allegedly committed a new offense, the court may postpone the revocation hearing pending disposition of the new offense whether or not the child is in custody.

(C) *Violation Not Proved.* If the court finds that a violation of the dispositional order has not been established by clear and convincing evidence, the revocation proceedings shall be dismissed, and the child shall continue under the dispositional order previously ordered by the court.

(D) *Violation Proved.* If the court finds by clear and convincing evidence, or the child admits violating the terms of the dispositional order, the court may proceed as follows:

(1) order a disposition pursuant to Minnesota Statutes, section 260B.198; or

(2) for a child who was previously granted a continuance without adjudication pursuant to Rule 15.05, subdivision 4, adjudicate the child and order a disposition pursuant to Minnesota Statutes, section 260B.198.

The dispositional order shall comply with Rule 15.05, subdivisions 2 and 3.

Rule 15.02 governs the timing of dispositional orders in probation violation matters.

(Amended December 12, 1997, for all juvenile actions commended 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 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 July 1, 2015.)

15.08 Other Modifications

Subdivision 1. Generally. Rule 15.08 governs the procedure to be followed when any party, including the court, seeks modification of a disposition.

Subd. 2. Modification by Agreement. A disposition may be modified by agreement of all the parties, either in writing or on the record. All agreements to modify a disposition must be approved by the court, and the court may order the parties to appear at a hearing to examine the merits of the modification and verify the voluntariness of the agreement on the record.

Subd. 3. Motion for Modification. All modification proceedings, shall be commenced by the filing of a motion or petition to modify the disposition. The motion for modification shall be in writing and shall be served and filed along with accompanying attachments, if any, in accordance with Rule 27. The motion or its attachments shall state the proposed modification and the facts and circumstances supporting such a modification.

Subd. 4. Written Request for Modification. If a child is not represented by counsel, the child or the child's parent may submit to the court a written request for modification and send a copy of the written request to the prosecuting attorney.

Subd. 5. Good Cause. Within ten (10) days of filing a motion or written request, the court shall determine from the written request or motion and accompanying attachments, if any, whether there is good cause to believe that a modification of the disposition is warranted under Rule 15.08, subdivision 8. If the court finds that good cause exists the court shall schedule a modification hearing within ten (10) days of such finding and issue a notice in lieu of summons or a summons in accordance with Rule 15.08, subdivision 6(A). If the court finds that good cause does not exist, the court shall issue an order denying the motion or written request for modification.

Subd. 6. Summons and Warrant.

(A) *Summons.* Notice in lieu of summons or a summons to the modification hearing shall be served upon the child, the child's counsel, the prosecuting attorney, the parent(s), legal guardian or legal custodian of the child, and any agency or department with legal custody of or supervisory responsibility over the child, pursuant to Rule 25. The summons shall be personally served upon the child.

(B) *Warrant.* The court may issue a warrant for immediate custody of a delinquent child or a child alleged to be delinquent if the court finds that there is probable cause to believe that the child has violated the terms of probation or a court order and:

(1) the child failed to appear after having been personally served with a summons or subpoena, or reasonable efforts to personally serve the child have failed, or there is a substantial likelihood that the child will fail to respond to a summons; or

(2) the child or others are in danger of imminent harm; or

(3) the child has left the custody of the detaining authority without permission of the court.

Subd. 7. Hearing.

(A) *Timing.* Except in extraordinary circumstances, the hearing shall be held within twenty (20) days of the date of filing of the modification request.

(B) *Hearing.* The modification hearing shall be conducted in accordance with Rule 15.04. The moving party bears the burden of proving that modification is warranted under Rule 15.08, subdivision 8 by clear and convincing evidence.

Subd. 8. Grounds for Modification. The court may order modification of the disposition after a hearing upon a showing that there has been a substantial change of circumstances such that the original disposition is:

(A) insufficient to restore the child to lawful conduct; or

(B) inconsistent with the child's actual rehabilitative needs.

The modification order shall comply with Rule 15.05, subdivisions 2 and 3.

(Amended December 12, 1997, for all juvenile actions commenced or arrests made on or after 12:00 o'clock midnight January 1, 1998; 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 July 1, 2015.)

Comment--Rule 15

The disposition for a child who has been designated an extended jurisdiction juvenile is also governed by Minn. R. Juv. Del. P. 19.10. Dispositional choices are enumerated in Minnesota Statutes 2002, section 260B.198, subdivisions 1 and 2. Probation revocation proceedings for a child who has been designated an extended jurisdiction juvenile are governed by Minn. R. Juv. Del. P. 19.11.

Minn. R. Juv. Del. P. 15.02 subd 3 is intended to address the deficiency noted by various appellate decisions that the juvenile rules do not specify a sanction for violation of the time limits in this rule. See In re Welfare of C.T.T., 464 N.W.2d 751, 753 (Minn. Ct. App. 1991) pet. for rev. denied (Minn. Mar. 15, 1991); In re Welfare of J.D.K., 449 N.W.2d 194, 196 (Minn. Ct. App. 1989).

The juvenile court and court personnel should make every effort to utilize culturally specific evaluation and assessment programs whenever predisposition reports for juveniles are ordered under Minn. R. Juv. Del. P. 15.03. The juvenile court should also keep in mind possible cultural issues and biases when evaluating predisposition reports, particularly when a culture-specific evaluation program is not available. See Minnesota Supreme Court Task Force on Racial Bias in the Judicial System, Final Report p. 46-47, 104, 108 (1994).

Before placing a child in a secure treatment facility the court may conduct a subjective assessment to determine whether the child is a danger to self or others or would abscond from a nonsecure facility or if the child's health or welfare would be endangered if not placed in a secure facility; conduct a culturally appropriate psychological evaluation which includes a functional assessment of anger and abuse issues; and conduct an educational and physical assessment of the juvenile. See Minnesota Statutes 2002, section 260B.198, subdivision 4.

When the child has counsel, counsel has the right and the duty to appear at and participate in the disposition hearing.

*As a matter of due process, the child has the absolute right to call and cross-examine the authors of any reports, object to the competency of the evidence contained in the reports, and otherwise respond to any adverse facts contained therein. See *In re Welfare of N.W.*, 405 N.W.2d 512, 516-17 (Minn. Ct. App. 1987) (citing *Scheibe v. Scheibe*, 241 N.W.2d 100 (Minn. 1976); *VanZee v. VanZee*, 226 N.W.2d 865 (Minn. 1974); *Stanford v. Stanford*, 123 N.W.2d 187 (Minn. 1963)).*

The child and other participants in the disposition hearing have the right to cross-examine the authors of any written report. However, Rules 15.03 and 15.04 do not mandate that the authors appear at the disposition hearing. Counsel may subpoena the authors of written reports for purposes of cross-examination.

Under Minn. R. Juv. Del. P. 15.05 subd 1, the decision to either adjudicate the child or grant a continuance without adjudication and the choice of disposition shall be made at the same time and in a single dispositional order. Accord Minn. R. Juv. Del. P. 21.03 subd 1. The purpose of this rule is to eliminate multiple appeals. Because both an adjudicatory order and a dispositional order are final, appealable orders, if the court adjudicates the child or grants a continuance without adjudication and then enters a dispositional order at a later date, the child is forced to appeal twice: once from the adjudicatory order and once from the dispositional order. By requiring the court to defer the adjudicatory decision until the time of disposition, the child can appeal both orders at the same time in one appeal.

*Requiring that the adjudicatory decision be deferred until the time of disposition should also eliminate the problem that arose in *In re Welfare of M.D.S.*, 514 N.W.2d 308 (Minn. Ct. App. 1994). There, the juvenile court entered an order finding that the allegations of the petition had been proved. The order also stated that adjudication was withheld but only for the purpose of transferring the case to the child's home county for disposition and further proceedings. The child attempted to appeal the order finding that the allegations of the petition had been proved. The appellate court held that the order was not appealable because it neither adjudicated the child delinquent nor finally determined that adjudication was withheld. Because the juvenile court is prohibited from adjudicating the child or granting a continuance without adjudication until the time of disposition under Minn. R. Juv. Del. P. 15.05 subd 1, it should be clear that there can be no appeal of the finding that the allegations of the charging document have been proved until after the court enters a dispositional order.*

*An order adjudicating a child delinquent prior to disposition is ineffective and not appealable. But the order becomes appealable as part of the disposition once a dispositional order is made. See *In re Welfare of G.M.*, 533 N.W.2d 883, C9-95-812 (Minn. Ct. App. July 3, 1995).*

A copy of the order adjudicating a child delinquent for committing felony-level criminal sexual conduct should be forwarded to the Bureau of Criminal Apprehension by the court in accordance with Minnesota Statutes 2002, section 260B.171, subdivision 2, paragraph (a).

Minnesota Statutes 2002, section 260B.198, subdivision 1, requires written findings on disposition in every case. Although this statute seemingly invades the province of the judiciary to govern its own procedures. Minn. R. Juv. Del. P. 15.05 subd 2(A) reiterates the statutory principle.

Minn. R. Juv. Del. P. 15.05 subd 2(B) recites some of the general principles relating to dispositions that have developed under Minnesota law.

a. The content of Minn. R. Juv. Del. P. 15.05 subd 2(B) is largely derived from Minnesota Statutes 2002, section 260B.001, subdivision 2; Minnesota Statutes 2002, section 260B.198, subdivision 1; In re Welfare of A.R.W. & Y.C.W., 268 N.W.2d 414, 417 (Minn. 1978) cert. denied 439 U.S. 989 (1978); In re Welfare of D.S.F., 416 N.W.2d 772 (Minn. Ct. App. 1987) pet. for rev. denied (Minn. Feb. 17, 1988); and In re Welfare of L.K.W., 372 N.W.2d 392 (Minn. Ct. App. 1985). See also Institute of Judicial Administration-American Bar Association, Juvenile Justice Standards: Standards Relating to Dispositions (1980). This rule does not create any substantive standards or limit the development of the law but is intended to assist the court when choosing a disposition by focusing on those standards that are already part of established Minnesota law. The court is not required to make findings on each of these factors in every case, although such findings may be helpful in contentious cases.

b. The overriding purpose in every juvenile delinquency disposition, declared by statute, is to "promote the public safety and reduce juvenile delinquency by maintaining the integrity of the substantive law prohibiting certain behavior and by developing individual responsibility for lawful behavior." Minnesota Statutes 2002, section 260B.001, subdivision 2. This statute and another declare the means to be employed by the juvenile court to serve its public safety purpose. First, the purpose of the court "should be pursued through means that are fair and just, that recognize the unique characteristics and needs of children, and that give children access to opportunities for personal and social growth." Id. Second, the court is to employ dispositions that are "deemed necessary to the rehabilitation of the child." Minnesota Statutes 2002, section 260B.198, subdivision 1. Each judicial district, after consultation with local county attorneys, public defenders, corrections personnel, victim advocates, and the public, is required to have written criteria for determining delinquency dispositions developed by September 1, 1995. See Minnesota Laws 1994, chapter 576, section 59.

Where appropriate, the court should make every effort to use any available culturally specific programs when making a disposition for a juvenile. The court should also be aware of racial disparities in dispositions among similarly situated juveniles, particularly for those offenses which have historically resulted in more severe sanctions for minorities. See Minnesota Supreme Court Task Force on Racial Bias in the Judicial System, Final Report p. 103-04, 108-09.

Minn. R. Juv. Del. P. 15.05 subd 3 provides that a dispositional order that transfers legal custody of the child under Minnesota Statutes 2002, section 260B.198, subdivision 1, paragraph (c), shall be for a specified length of time. See Minnesota Statutes 2002, section 260B.198, subdivision 9.

The duration of a disposition that transfers custody of the child to the Commissioner of Corrections pursuant to Minnesota Statutes 2002, section 260B.198, subdivision 1, paragraph (d), is determined by the Commissioner. See In re Welfare of M.D.A., 237 N.W.2d 827 (Minn. 1975).

"Withholding of adjudication" was redesignated as "continuance without adjudication" to conform with the statutory language of Minnesota Statutes 1994, section 260.185, subdivision 3. Continuance without adjudication is now authorized by Minnesota Statutes 2002, section 260B.198, subdivision 7. The court must find that the allegations of the charging document have been proved

before it can continue a case without adjudication. *Id.* The court may not grant a continuance without adjudication in an extended juvenile jurisdiction proceeding. *Id.*

Continuance without adjudication (or withholding of adjudication) has a material effect on a child's juvenile record. Prior to 1983, the Minnesota Sentencing Guidelines assigned one criminal history point for every two felony-level "juvenile adjudications." See *Minnesota Sentencing Guidelines II.B.4* (1982). In *State v. Peterson*, 331 N.W.2d 483 (Minn. 1983), the defendant claimed that it was error to use juvenile offenses for which there had been findings but no adjudication when calculating his criminal history score under the sentencing guidelines. The supreme court did not reach the defendant's argument but suggested that the Sentencing Guidelines Commission amend the guidelines to avoid the issue raised by defendant. *Id.* at 486. The guidelines were subsequently amended in 1983 to assign one criminal history point for every two felony-level offenses "committed and prosecuted as a juvenile", provided the juvenile court made findings pursuant to an admission or trial. *Minnesota Sentencing Guidelines II.B.4* (2002). Because Minnesota Statutes, section 260B.198, subdivision 7, requires a finding that the juvenile committed the offense alleged in the charging document before the court may continue the case without an adjudication, which finding satisfies the requirements of the sentencing guidelines for counting a juvenile offense in the criminal history score, a continuance without adjudication (or withholding of adjudication) will not exclude the juvenile offense from a subsequent criminal history score. See John O. Sonsteng, et al. 12 *Minnesota Practice* at 215 (1997). Continuance without adjudication may prevent the operation of some statutes which still require that the child be adjudicated delinquent. See, e.g., Minnesota Statutes 2002, section 609.117, subdivision 1, clause (3), (provision of biological specimens for DNA analysis).

A continuance without adjudication or continuance for dismissal under Minn. R. Juv. Del. P. 14 are not the only options available for dealing with an alleged juvenile offender without formal process. Every county attorney should have a pretrial diversion program established for certain juveniles subject to juvenile court jurisdiction, as an alternative to formal adjudication. See Minnesota Statutes 2002, section 388.24. With statutory pretrial diversion readily available for less serious juvenile offenders, presumably the use of continuance without adjudication and continuance for dismissal under these rules will become less common.

Much of Minn. R. Juv. Del. P. 15.07 was taken from Minn. R. Crim. P. 27.04. There was question as to whether probation officers could detain juveniles pending a probation violation hearing for 72 hours pursuant to Minnesota Statutes 2004, sections 244.195, subdivision 2, and 401.025, subdivision 1. Minn. R. Juv. Del. P. 15.07 subd 2 was clarified to indicate that the maximum period for the detention of juveniles pending a probation violation hearing is 36 hours pursuant to Minn. R. Juv. Del. P. 5 and Minnesota Statutes 2004, section 260B.176, subdivision 2.

The three-step *Austin* analysis (see *State v. Austin*, 295 N.W.2d 246 (Minn. 1980)) is not required when revoking a juvenile's probation under Minn. R. Juv. Del. P. 15.07 subd 4(D) "because the juvenile rules afford non-EJJ juvenile probationers better protection against the reflexive execution of a stayed disposition requiring confinement in a secure facility than *Austin* would afford." *In re Welfare of R.V.*, 702 N.W.2d 294 (Minn. Ct. App. 2005).

Unless all the parties agree to a proposed modification, the court may not order modification of the disposition after an informal review without commencing a modification proceeding pursuant to Minn. R. Juv. Del. P. 15.08 in order to give the parties an opportunity to contest the proposed modification before it is imposed.

Under Minn. R. Juv. Del. P. 15.08 subd 2, the court is not required to hold a hearing to examine a modification agreement on the record in every case. But agreements to make upward modifications to a disposition will normally require a court appearance and approval on the record in order to

ensure that the proposed modification complies with the law, and that the child appreciates the significance of the modification and voluntarily consents to the modification. The discretion to approve a modification without an appearance is intended to be reserved for relatively minor, usually downward, modifications.

Rule 15.08 does not apply to probation revocations, the procedure for which is governed by Rule 15.

Minnesota Statutes 2002, section 260B.154, addresses the court's authority to issue a warrant for immediate custody for the child. Minnesota Statutes, section 260B.175, subdivision 1, paragraph (c), addresses the authority of a peace officer or probation officer to take a child into custody for allegedly violating the terms of probationary supervision.

Counsel for the child has the right and duty to appear at and participate in all probation revocation and modification proceedings and hearings. See Minn. R. Juv. Del. P. 3.02 subd 4.

Reference in this rule to "counsel for the parent(s), legal guardian, or legal custodian" includes the parent, legal guardian, or legal custodian who is proceeding pro se. Minn. R. Juv. Del. P. 1.01.