

Rule 5. Detention**5.01 Scope and General Principles**

Rule 5 governs all physical liberty restrictions placed upon a child before trial, disposition, or pending a probation violation hearing. For purposes of this Rule, the day of the act or event from which the designated period of time begins to run shall be included.

(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.)

5.02 Definitions

Subdivision 1. Detention. Detention includes all liberty restrictions that substantially affect a child's physical freedom or living arrangements before trial, disposition or pending a probation violation hearing. A child's physical liberty is restricted when:

- (A) the child is taken into custody;
- (B) the court orders detention of the child;
- (C) the court orders out-of-home placement; or
- (D) the court orders electronic home monitoring or house arrest with substantial liberty restrictions.

Subd. 2. Detaining Authority. The detaining officer, the detaining officer's supervisor, the person in charge of the detention facility, the prosecuting attorney or the court is a detaining authority for the purposes of this rule.

Subd. 3. Place of Detention for Juvenile Delinquent Offenders. A place of detention for a juvenile delinquent offender can be any one of the following places:

- (A) the child's home subject to electronic home monitoring or house arrest with substantial liberty restrictions;
- (B) a foster care or shelter care facility;
- (C) a secure detention facility;
- (D) a detoxification, chemical dependency, or psychiatric facility;
- (E) an adult jail; or
- (F) any other place of detention.

Subd. 4. Place of Detention for Juvenile Petty or Traffic Offenders. A place of detention for a juvenile petty or traffic offender can be any one of the following places:

- (A) a child's relative;
- (B) a standby or temporary custodian under Minnesota Statutes, chapter 257B; or
- (C) a shelter care facility.

(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, 2008; amended effective July 1, 2015.)

5.03 Detention Decision

Subdivision 1. Presumption for Unconditional Release. The child shall be released unless:

- (A) the child would endanger self or others;
- (B) the child would not appear for a court hearing;
- (C) the child would not remain in the care or control of the person into whose lawful custody the child is released; or
- (D) the child's health or welfare would be immediately endangered.

There is a presumption that a child will not appear for a court hearing when the person to whom the child is to be released refuses to sign a written promise to bring the child to court.

Subd. 2. Detention Factors. The following nonexclusive factors may justify a decision to detain a child:

- (A) the child is charged with the misdemeanor, gross misdemeanor or felony offense of arson, assault, prostitution or a criminal sexual offense;
- (B) the child was taken into custody for an offense which would be a presumptive commitment to prison offense if committed by an adult, or a felony involving the use of a firearm;
- (C) the child was taken into custody for additional felony charges while other delinquency charges are pending;
- (D) the child was taken into custody for a felony and, as a result of prior delinquency adjudication(s), has received an out-of-home placement;
- (E) the child was an escapee from an institution or other placement facility to which the court ordered the child;
- (F) the child has a demonstrable recent record of willful failure to appear at juvenile proceedings;
- (G) the child is a fugitive from another jurisdiction; or
- (H) the above factors are not met but the detaining authority documents in writing, objective and articulable reasons why the child's welfare or public safety would be immediately endangered if the child were released.

Subd. 3. Discretion to Release Even if One or More Factors are Met. Even if a child meets one or more of the factors in Rule 5.03, subdivisions 1 and 2, the detaining authority has broad discretion to release that child before the detention hearing if other less restrictive measures would be adequate.

Subd. 4. Factors Which Cannot Support Detention Decision. In deciding whether detention is justified, the detaining authority shall not consider the child or the child's family's race, color, gender, sexual orientation, religion, national origin, economic or public assistance status, family structure or residential mobility.

(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.)

5.04 Release or Continued Detention

Subdivision 1. For Child Taken Into Custody Pursuant to Court Order or Warrant.

(A) *Detention Required.* Unless the court orders an earlier release, the child may be detained for thirty-six (36) hours after being taken into custody, excluding Saturdays, Sundays and holidays.

(B) *When Release is Mandatory.* Unless the time for the detention hearing is extended by twenty-four (24) hours pursuant to Rule 5.07, subdivision 7, the child shall be released no later than thirty-six (36) hours after being taken into custody, excluding Saturdays, Sundays and holidays, unless the court orders continued detention following a detention hearing commenced within that time period.

Subd. 2. For Child Taken Into Custody Without a Court Order or Warrant.

(A) *Exception Permitting Detention.* The officer taking a child into custody without a court order or warrant shall release the child unless the officer reasonably believes, after consideration of the factors set out in Rule 5.03, that:

- (1) the child would endanger self or others;
- (2) the child would not appear for a court hearing;
- (3) the child would not remain in the care or control of the person into whose lawful custody the child is released; or
- (4) the child's health or welfare would be immediately endangered.

There is a presumption that a child will not appear for a court hearing when the person to whom the child is to be released refuses to sign a written promise to bring the child to court.

(B) *Discretionary Release Any Time Before Detention Hearing.* The detaining authority has discretion to release a child any time before the detention hearing if other less restrictive measures would be adequate.

(C) *When Release is Mandatory.* Unless the time for the detention hearing is extended by twenty-four (24) hours pursuant to Rule 5.07, subdivision 7, the child shall be released no later than thirty-six (36) hours after being taken into custody, excluding Saturdays, Sundays and holidays, unless the court orders continued detention following a detention hearing commenced within that time period.

Subd. 3. Child Taken Into Custody and Placed in an Adult Jail or Municipal Lockup.

(A) *Generally.* The child shall be released no later than twenty-four (24) hours after being taken into custody, excluding Saturdays, Sundays and legal holidays, unless within that time period, a charging document has been filed with the court and the court has determined at a detention hearing that the child shall remain detained. If the court's decision at the detention hearing is that the child shall remain detained, the child shall be detained at a juvenile facility in accordance with Rule 5.02, subdivision 3. The court may extend the time for a detention hearing for good cause pursuant to Rule 5.07, subdivision 7 only if a charging document has been filed with the court within twenty-four (24) hours of the child being taken into custody, excluding Saturdays, Sundays and legal holidays.

(B) *Adult Jail or Municipal Lockup in a Standard Metropolitan Statistical Area.* If the jail or municipal lockup is in a standard metropolitan statistical area, the child shall be held no longer than six (6) hours after the child was taken into custody including Saturdays, Sundays and holidays

unless a charging document has been filed with the court within that time period and the court has determined after a detention hearing that the child shall remain detained. If the court's decision at the detention hearing is that the child shall remain detained, the child shall be detained at a juvenile facility in accordance with Rule 5.02, subdivision 3. The time for a detention hearing shall not be extended.

Subd. 4. Probable Cause Determination.

(A) *Time Limit.* The child shall be released no later than forty-eight (48) hours after being taken into custody without a court order or warrant signed by a judge, including the day the child was detained, Saturdays, Sundays and legal holidays, unless the court determines there is probable cause to believe the child committed the offense(s) alleged.

(B) *Application and Record.* The facts establishing probable cause to believe the offense(s) was committed and that the child committed the offense(s) shall be presented to the judge upon oath, either orally or in writing, or signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116. Oral testimony shall be recorded and retained by the judge. Facts that are contained in a written document may be presented to the judge by telephone, video, or other electronic means. If probable cause is determined on facts contained in a written document and the judge is not available to sign the determination, the document shall be presented to the judge for signature within two (2) business days. The judge shall be advised if a prior request for a probable cause determination was made and turned down relative to the same incident.

(C) *Approval of Prosecuting Attorney.* No request for a probable cause determination may proceed without approval by the prosecuting attorney. The person requesting the probable cause determination shall, under oath or signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, state that the prosecutor approves the request. If the prosecutor is unavailable, the court may make the probable cause determination if the matter should not be delayed.

(D) *Determination.* After the information is presented, the court shall determine whether there is probable cause to believe an offense(s) was committed and that the child committed the offense(s). If probable cause is found, the court may order continued detention pursuant to Rule 5, and release the child with conditions or with no conditions. A written determination of probable cause shall be filed with the court and a copy provided to the child and child's counsel.

Subd. 5. Release of Any Child at Any Time by the Court and Conditions of Release. Only the court may impose conditions of release. The court at any time may release a child and may impose one or more of the following conditions:

(A) require the parent(s), legal guardian, legal custodian or child to post bail;

(B) place restrictions on the child's travel, associations or place of abode during the period of the child's release; or

(C) electronic home monitoring or any other conditions deemed reasonably necessary and consistent with factors for detaining the child.

Unless the time for the detention hearing is extended by twenty-four (24) hours pursuant to Rule 5.07, subdivision 7, all conditions of release which restrict the physical liberty of a child terminate after thirty-six (36) hours excluding Saturdays, Sundays and legal holidays unless a detention hearing has commenced and the court has ordered continued detention.

Subd. 6. Release to Custody of Parent or Other Responsible Adult. A child released from a place of detention shall be released to the custody of the child's parent(s), legal guardian, or legal custodian if deemed appropriate by the detaining authority. If these individuals are unavailable or

deemed inappropriate, the detaining authority may release the child to a member of the extended family or kinship network or other suitable adult deemed appropriate by the detaining authority and acceptable to the child.

(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, 2008; amended effective December 1, 2012; amended effective July 1, 2015.)

5.05 Detention Reports

Subdivision 1. Report by Detaining Authority. When a child has been detained, the detaining officer or his agent shall file a signed report with the court and deliver a copy to the supervisor of the facility containing the following information:

(A) the time the child was taken into custody and the reasons why the child was taken into custody;

(B) the time the child was delivered to the place of detention and the reasons why the child is being held there;

(C) a statement that the child and the child's parent(s), legal guardian or legal custodian have received the notification required by Minnesota Statutes, section 260B.176, subdivisions 3 and 5, including the advisory that every child at a detention hearing has a right to counsel at public expense pursuant to Rule 3.02, subdivision 6, and the time such notification was given to each or the efforts made to notify them.

Subd. 2. Report by Supervisor of the Secure Detention Facility or Shelter Care Facility. When a child has been delivered to a secure detention facility or shelter care facility, the supervisor of the facility shall file with the court a signed report acknowledging receipt of the child and containing a statement that the child and the child's parent(s), legal guardian or legal custodian have received the notification required by Minnesota Statutes, section 260B.176, subdivisions 3 and 5, and the time such notification was given to each or the efforts made to notify them.

Subd. 3. Timing of Reports. The reports shall be filed with the court on or before the court day following detention of the child or by the time of the detention hearing, whichever is earlier.

Subd. 4. Notice to Child's Counsel; Child's Counsel Access to Child and Reports. If a child is detained pending a detention hearing in a place of detention other than home detention or at home on electronic home monitoring, the court administrator shall give the Office of the Public Defender or the child's attorney, if privately retained, notice that the child is in custody, notice of the detention hearing and provide copies of the reports filed with the court by the detaining officer and the supervisor of the place of detention. Child's counsel shall have immediate and continuing access to the child.

(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.)

5.06 Identification Procedures

Subdivision 1. Photographing.

(A) *Generally.* A detained child may be photographed when the child is taken into custody in accordance with the laws relating to arrests. All children in custody alleged to have committed a felony or gross misdemeanor shall be photographed without a court order.

(B) *Report.* A report stating the name of the child photographed and the date the photograph was taken shall be filed with the court.

Subd. 2. Fingerprinting.

(A) *Generally.* All children in custody alleged to have committed a felony or gross misdemeanor shall be fingerprinted without court order. Otherwise, a court order is required pursuant to Rule 10.

(B) *Report.* A report stating the name of the child fingerprinted and the date of the fingerprinting shall be filed with the court.

Subd. 3. Line-Up.

(A) *Generally.* A detained child may be placed in a line-up. A child may choose not to participate in a line-up which is not related to the matter for which the child is detained unless ordered by the court to appear in a line-up pursuant to Rule 10.05, subdivision 2(A).

(B) *Right to Counsel During Line-Up for Child Alleged to be Delinquent.* A child has the right to have counsel present when placed in a line-up related to a delinquent act for which the child has been taken into custody unless exigent circumstances exist such that providing counsel would unduly interfere with a prompt investigation of the crime. When a delinquency petition has been filed, counsel for the child shall be present for any line-up. Any identification evidence obtained without the presence of counsel shall be inadmissible, unless the line-up occurred before the filing of the petition and exigent circumstances existed preventing the presence of counsel.

(C) *Report.* A report stating the name of the children who participated in the line-up and the date of the line-up shall be filed with the court.

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

5.07 Detention Hearing

Subdivision 1. Time and Filing. For a child detained in a secure juvenile detention facility or shelter care facility, the court shall commence a detention hearing within thirty-six (36) hours of the time the child was taken into custody, excluding Saturdays, Sundays, and holidays, unless a charging document has been filed and the judge or referee determines pursuant to Minnesota Statutes, section 260B.178, that the child shall remain in detention. For a child detained in an adult jail or municipal lockup, the court shall commence a detention hearing within twenty-four (24) hours of the time the child was taken into custody, excluding Saturdays, Sundays, and holidays, or within six (6) hours of the time the child was taken into custody if the child is detained in an adult jail or municipal lockup in a standard metropolitan statistical area, including Saturdays, Sundays, and holidays, unless a charging document has been filed and the judge or referee determines pursuant to Minnesota Statutes, section 260B.178, that the child shall remain in detention.

The following documents shall be filed with the court before the detention hearing:

(A) a report or reports that the child is being held in detention filed pursuant to Rule 5.05; and

(B) a charging document with probable cause.

Subd. 2. Notice.

(A) *Child, Child's Counsel, Prosecuting Attorney, Child's Parent(s), Legal Guardian or Legal Custodian and Spouse of the Child.* The court shall inform the child, the child's counsel, the prosecuting attorney, the child's parent(s), legal guardian or legal custodian and spouse of the child of the time and place of the detention hearing pursuant to Rule 25. Failure to inform the parent(s), legal guardian or legal custodian or spouse of the child or their absence at the hearing shall not prevent the hearing from being conducted or invalidate an order of detention.

(B) *Victim.* If a detained child is charged with a crime of violence against a person or attempting a crime of violence against a person, the court administrator shall make reasonable and good faith efforts to notify the victim of the alleged crime of:

- (1) the time and place of the detention hearing;
- (2) the name and telephone number of a person that can be contacted for additional information; and
- (3) the right of the victim and victim's family to attend the detention hearing.

If the victim is incapacitated or deceased, notice must be given to the victim's family. If the victim is a minor, notice must be given to the victim's parent, legal guardian or legal custodian.

Subd. 3. Advice of Rights. At the beginning of the detention hearing, the court shall advise all persons present of:

- (A) the reasons why the child was taken into custody;
- (B) the allegations of the charging document;
- (C) the purpose and scope of the detention hearing;
- (D) the right of the child to be represented by counsel at the detention hearing and at every other stage of the proceedings, and the right of a child alleged to be delinquent to counsel at public expense; and
- (E) the right of the child to remain silent.

Subd. 4. Evidence. The court may admit any evidence including reliable hearsay and opinion evidence that is relevant to the decision whether to detain the child. The court may not admit evidence of privileged communications.

Subd. 5. Findings Necessary for Continued Detention. A court may detain a child beyond the time set in subdivision 1 of this rule if, after a hearing, the court finds:

- (A) probable cause to believe the child committed the offense(s) alleged pursuant to Rule 5.04, subdivision 4; and
- (B) there is reason to believe that if the child were released, after consideration of the factors set forth in Rule 5.03, that:
 - (1) the child would endanger self or others;
 - (2) the child would not appear for a court hearing;
 - (3) the child would not remain in the care or control of the person into whose lawful custody the child is released; or
 - (4) the child's health or welfare would be immediately endangered.

There is a presumption that a child will not appear for a court hearing when the person to whom the child is to be released refuses to sign a written promise to bring the child to court.

Subd. 6. Order.

(A) *Release.* The child shall be released if the findings required by Rule 5.07, subdivision 5, are not made.

(B) *Detention.* If the findings required by Rule 5.07, subdivision 5, are made, the court may order continued detention or release with the posting of bail or bond and other conditions deemed appropriate by the court. An order stated on the record shall also be reduced to writing by the court within five (5) days of entry of the order.

(C) *Notice of Next Hearing.* On the record, the court shall advise all persons present of the date, time, and place of the next hearing. If persons entitled to participate at the next hearing are not present, the court shall provide those persons with notification of the next hearing by written notice of hearing. If the child is released, the child may be required to sign a promise to appear.

Subd. 7. Extension of Time for Detention Hearing. For good cause shown, the court may extend the time for a detention hearing by twenty-four (24) hours on written application of the prosecuting attorney, if the application for extension is filed with the court within the time prescribed by this rule. The court may extend the time for one additional twenty-four (24) hour period upon a second written application being filed within the extended time previously ordered by the court.

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

5.08 Detention Review

Subdivision 1. Informal Review. An informal review of detention shall be made by the court every eight (8) days, excluding Saturdays, Sundays and holidays, of the child's detention. If the circumstances justifying detention have not changed, detention may be continued. If the circumstances justifying detention have changed, detention may be modified with consent of the child, child's counsel, and the prosecuting attorney. An order stated on the record shall also be reduced to writing by the court within five (5) days of entry of the order.

Subd. 2. Formal Review. The court may schedule a formal review of detention at any time.

(A) *Request by Child, Child's Counsel or Prosecuting Attorney.* If the court finds a substantial basis exists for the request to schedule a hearing to review detention, a hearing shall be scheduled as soon as possible, and at least within eight (8) days of the request.

(B) *Notice.* The person requesting a formal review shall make the request by motion as provided in Rule 27.

(C) *Relevant Evidence.* Subject to constitutional limitations and privileged communications, the court may admit any evidence, including reliable hearsay and opinion evidence that is relevant to the decision regarding continued detention of the child.

(D) *Continued Detention.* The court may continue the child in detention if the court makes findings pursuant to Rule 5.07, subdivision 5. An order stated on the record shall also be reduced to writing by the court within five (5) days of entry of the order.

(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, 2008.)

Comment--Rule 5

There is a presumption in favor of releasing an accused child unconditionally. If the child cannot be released unconditionally, the least restrictive liberty restriction is favored. The American Bar Association's Juvenile Justice Standards Relating to Interim Status: The Release Control, and Detention of Accused Juvenile Offenders Between Arrest and Disposition (1980) describes the general principles governing liberty restrictions. These general principles and policy considerations do not determine the outcomes of specific cases. Rather, they provide the process framework within which law enforcement and intake personnel, prosecuting attorneys and judges decide individual cases. When these decision makers decide whether or not to place a child in detention or to impose other physical liberty restrictions, the following policy considerations apply: to the greatest extent possible, any interim liberty restrictions should respect the autonomy interests of the accused child and family, ensure equality of treatment by race, class, ethnicity, and sex, ensure the child promptly receives access and continuing access to legal assistance, protect the child's access to education to the extent reasonably possible, and ensure public safety.

The primary concern of this rule is a child's physical liberty and living arrangements pending trial and disposition. For purposes of this rule, other nonphysical limitations on a child's autonomy, such as a court order to avoid contact with victims or witnesses, to attend school, to remain under the control of parents or custodians, or the like, do not constitute liberty restrictions that invoke either the procedures of this rule or the expedited timing of procedures for youths physically detained or restricted.

Minnesota Statutes 2002, section 260B.154, authorizes the court to issue a warrant for immediate custody for a child who fails to appear in court in response to a summons. Minnesota Statutes 2002, section 260B.175, authorizes a child to be taken into custody: 1) when the child has failed to obey a summons or subpoena; 2) pursuant to the laws of arrest; or 3) by a peace officer or probation or parole officer when it is reasonably believed that the child has violated the terms of probation, parole, or other field supervision. Minn. R. Juv. Del. P. 5.07 defines the circumstances under which a child is subject to continuing physical restraints. Minnesota Statutes 2002, section 260B.176, authorizes a detention hearing and provides the statutory framework that governs this rule.

Minn. R. Juv. Del. P. 5.02 subd 3 defines the places in which a child's liberty is restricted. A child's liberty is restricted when the child is placed at home, but his or her physical mobility is limited by electronic home monitoring, or house arrest with substantial liberty restrictions. In addition, the provisions of this rule apply whenever, prior to disposition, the child is placed outside of the home, whether or not the placement is in a secure facility. Thus, a child's liberty is restricted when placed in a foster care (Minnesota Statutes 2002, section 260B.007, subdivision 7) or shelter care facility (Minnesota Statutes 2002, section 260B.007, subdivision 15), in a detoxification or mental health treatment facility, in a secure detention facility (Minnesota Statutes 2002, section 260B.007, subdivision 14), in an adult jail or lock-up, or other place of detention. A child who is returned to an out-of-home placement which was made voluntarily or pursuant to a CHIPS proceeding is not "detained" for the purposes of this rule.

Minn. R. Juv. Del. P. 5.03 subd 1 establishes a general presumption in favor of unconditional release for all children taken into custody. Minn. R. Juv. Del. P. 5.03 subd 2 provides some nonexclusive evidentiary guidelines by which detaining authorities can decide whether a child meets the criteria for detention. Under Minn. R. Juv. Del. P. 5.03 subd 2, the detaining authority may detain a child if it believes or the court finds that the child poses a danger to other people because the child is charged with a presumptive commitment to prison offense. The presumptive commitment to prison offenses are enumerated under Section V, Offense Severity Reference Table of the Minnesota Sentencing Guidelines. In addition, an inference the child poses a danger to others applies when the child uses a firearm in the commission of a felony pursuant to Minnesota Statutes 2002, section 260B.125, subdivisions 3 and 4. However, detaining authorities should exercise individualized discretion. Moreover, detaining authorities ought not detain children who meet the evidentiary criteria if other, less restrictive alternatives would assure the child's subsequent court appearance, welfare, and public safety. The nonexclusive evidentiary criteria emphasize objective indicators that the child poses a danger to self or others, or would fail to return for court appearances. The list of criteria set out in Minn. R. Juv. Del. P. 5.03 subd 2 are examples of factors which may justify pretrial detention. If a detained child does not meet any of the enumerated criteria, the detaining authority may justify detention only if a written report is filed stating objective and articulable reasons for detention. Minn. R. Juv. Del. P. 5.03 subd 2.

Minn. R. Juv. Del. P. 5.03 governs the initial custody decisions affecting a juvenile by the police, detention and court intake personnel, and the prosecuting attorney. Minn. R. Juv. Del. P. 5.04 subd 1 governs the liberty restrictions on a child taken into custody pursuant to a court order or warrant. Minn. R. Juv. Del. P. 5.04 subd 2 governs the liberty restrictions of a child taken into custody by a peace officer or other person, and then brought to a detention facility or other place of custody.

Minn. R. Juv. Del. P. 5.04 subd 3 is based upon Minnesota Statutes 2002, section 260B.176, subdivision 2. 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 2002, section 260B.176, subdivision 2. 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 charging document within twenty-four (24) hours of the child being taken into custody, excluding Saturdays, Sundays and legal holidays. Minn. R. Juv. Del. 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 a juvenile facility in accordance with Minn. R. Juv. Del. P. 5.02 subd 3. Id. See also 42 U.S.C.A. section 5633(a)(14) (1995). The placement options in Minn. R. Juv. Del. P. 5.02 subd 4 are not referenced in Minn. R. Juv. Del. P. 5.04 subd 3(A) and (B) because the placement limitations in Minnesota Statutes, section 260B.181, subdivisions 2 and 3, preclude the initial detention of juvenile petty offenders in an adult jail or municipal lockup.

Minn. R. Juv. Del. P. 5.04 subd 4 is based upon Minn. R. Crim. P. 4.03. Under Minn. R. Juv. Del. P. 5.04 subd 4, if a child arrested without a warrant is not released by law enforcement, court intake, the court, or the prosecuting attorney, then a judge or judicial officer must make a probable cause determination without unnecessary delay and in any event within forty-eight (48) hours from the time of the arrest including the day of arrest, Saturdays, Sundays, and legal holidays. If the Court determines that probable cause does not exist or if there is no determination as to probable cause within the time as provided by this rule, the person shall be released immediately. County

of Riverside v. McLaughlin, 500 U.S. 44, 111 S.Ct. 1661, 114 L.Ed.2d 49 (1991), requires a prompt judicial determination of probable cause following a warrantless arrest. That determination must occur without unreasonable delay and in no event later than forty-eight (48) hours after the arrest. There are no exclusions in computing the forty-eight-hour time limit. Even a probable cause determination within forty-eight (48) hours will be too late if there has been unreasonable delay in obtaining the determination. "Examples of unreasonable delays are delays for the purpose of gathering additional evidence to justify the arrest, a delay motivated by ill will against the arrested individual or delay for delay's sake." *County of Riverside v. McLaughlin*, 500 U.S. 44, 64, 111 S.Ct. 1661, 1670, 114 L.Ed.2d 49 (1991). The requirements of Minn. R. Juv. Del. P. 5.04 subd 4 are in addition to the requirement that a child arrested without a warrant must receive a detention hearing within thirty-six (36) hours after the arrest, exclusive of Saturdays, Sundays, and legal holidays. Because of the exclusion permitted in computing time under the "36-hour rule," compliance with that rule will not necessarily assure compliance with the "48-hour rule." The "48-hour rule" also applies to all misdemeanor cases.

Minn. R. Juv. Del. P. 5.05 subd 4 requires the court administrator to notify the office of the Public Defender that a child is in custody and the time of the detention hearing. If a specific attorney has been assigned to represent the child, that attorney should receive notice. In jurisdictions where public defenders rotate, notice to the chief public defender would be sufficient. Minnesota data privacy laws do not restrict notification of counsel of a child's detention prior to the first appearance in court and appointment of counsel. The rules of professional responsibility and attorney client privilege adequately protect the privacy of the child.

Minn. R. Juv. Del. P. 5.06 subd 1 implements the provision of Minnesota Statutes 2002, section 299C.10, which requires peace officers to take the fingerprints and photograph of a child taken into custody according to the laws of arrest, pursuant to Minnesota Statutes 2002, section 260B.175, subdivision 1, paragraph (b). Any photograph taken of a child must be destroyed when the child reaches the age of 19 years. Minnesota Statutes 2002, section 260B.171, subdivision 5, paragraph (c). Minn. R. Juv. Del. P. 5.06 subd 2 implements the provisions of Minnesota Statutes 2002, section 299C.10, which requires law enforcement personnel to take the fingerprints of all juveniles arrested or charged with felony- or gross misdemeanor-level offenses.

Minn. R. Juv. Del. P. 5.06 subd 3 implements the policies of *U.S. v. Wade*, 388 U.S. 218 (1967) to provide the assistance of counsel to minimize the dangers of erroneous misidentification. See Feld, "Criminalizing Juvenile Justice: Rules of Procedure for the Juvenile Court," 62 Minn. L. Rev. 141, 209-16 (1984). Unlike the formalistic limitations imposed by *Kirby v. Illinois*, 406 U.S. 682 (1972), the rule recognizes that the dangers of unreliability, suggestibility, and error are inherent in all identification procedures. The rule attempts to balance the protection of a child from prejudicial misidentification with the State's interest in prompt investigation. A child who is in custody is entitled to have counsel present at a line up, even prior to the filing of a delinquency petition, unless exigent circumstances exist and delay to provide counsel would unduly interfere with an expeditious investigation. *Blue v. State*, 558 P.2d 636 (Alaska 1977); *People v. Jackson*, 391 Mich. 323, 217 N.W.2d 22 (Mich. 1974); *Commonwealth v. Richman*, 238 Pa. Super. 413, 357 A.2d 585 (1976). Once an investigation proceeds beyond an immediate on-the-scene show-up, and especially once the child is in custody, there are no compelling law enforcement exigencies that offset the dangers of prejudice to the child. Since youth in custody already have a *Miranda* right to counsel, 384 U.S. 436 (1966), the delay involved in securing counsel will be a matter of hours at most and if conditions require immediate identification without even minimal delay or if counsel cannot be present within reasonable time, such existent circumstances will justify proceeding without counsel. *People v. Bustamante*, 30 Cal. 3d 88, 634 P.2d 927 (Cal. 1981).

Minn. R. Juv. Del. P. 5.07 implements Minnesota Statutes 2002, section 629.725, by providing that, in addition to giving notice to the child, child's counsel, prosecuting attorney, child's parent(s), legal guardian or legal custodian and spouse of the child, the court administrator must make a reasonable and good faith effort to give notice of the time and place of the detention hearing to the victim if the child is charged with a crime of violence against a person or attempting a crime of violence against a person. If the victim is deceased or incapacitated, the victim's family must receive notice. If the victim is a minor, the victim's parent or guardian must receive notice. Minnesota Statutes 2002, section 629.725. "Crime of violence" has the meaning given it in Minnesota Statutes 2002, section 624.712, subdivision 5, and also includes Minnesota Statutes 2002, section 609.21, gross misdemeanor violations of Minnesota Statutes 2002, section 609.224, and nonfelony violations of Minnesota Statutes 2002, sections 518B.01, 609.2231, 609.3451, 609.748, and 609.749. Id.