Brightening One World for Juveniles

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Minnesota Juvenile Court Rules: Brightening
One World for Juveniles

I. INTRODUCTION

Speaking for the majority in Kent v. United States, Justice Fortas observed:

There is evidence . . . that the child receives the worst of both worlds: that he gets neither the protection accorded to adults nor the solicitous care and regenerative treatment postulated for children.

Dean Paulsen, a thoughtful and prolific critic of the juvenile court process, in commenting on Kent, stated, "[f]or children who are receiving 'the worst of both worlds' it is no great achievement to brighten the one that may not matter as much to them." His comment reflects a cynicism toward procedural reform in the juvenile court process which is evidently not shared by many legislators and judicial officers. For since the revolutionary decisions of Kent and In re Gault, statutory revisions of juvenile court acts and promulgations of juvenile court rules designed to brighten the procedural world of the juvenile court process have been proceeding at a fast pace.

This flurry of procedural reform signals the rejection of the long held belief that since juvenile court proceedings are technically noncriminal, they are immune from attack on the grounds that criminal due process rights have been violated. It also heralds the acceptance of the thesis advanced by many legal commentators that the juvenile court system works most equitably when its procedures are formalized to meet the constitutional standards of due process. Having placed its imprima-

2. Id. at 556.
5. California, Michigan, New Jersey and New York have recently revised their juvenile court acts or promulgated procedural rules.
tur on this thesis by its decisions in *Kent* and *Gault*, the Supreme Court can be expected to continue the process of what Dean Paulsen calls the “domestication” of the juvenile court. In his words, the language of *Gault* “reads like a warning shot, fired to gain the attention of state court judges and lawmakers. It will not go unheeded by the prudent.”

The Minnesota Juvenile Court Judges Association must be numbered among the prudent. In response to the Supreme Court, the recommendations of a state executive body and its own long felt need for established rules of procedure, the Association promulgated the Minnesota Juvenile Court Rules which became effective in all Minnesota Probate-Juvenile Courts on March 1, 1969. Although the Rules must necessarily fit within the framework of the Minnesota Juvenile Court Act, their creation of new rights and responsibilities for participants in the juvenile court cause will have a profound effect on all stages of procedure in the juvenile-probate courts.

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11. The Minnesota Juvenile Court Act provides for two distinct types of juvenile courts. Minn. Stat. § 260.021(1) (1967) provides that “[i]n counties now or hereafter having a population of more than 200,000, the district court is the juvenile court.” Minn. Stat. § 260.021(4) (1967) provides: “In counties now or hereafter having a population of not more than 200,000, the probate court is the juvenile court.” As of this date the district courts of Hennepin and Ramsey Counties, which include the cities of Minneapolis and Saint Paul, respectively, have jurisdiction over juvenile court causes and thus are not subject to the Rules. Minn. Stat. § 260.021(1) (1967). While St. Louis County, which includes Duluth, has a population in excess of 200,000, it recently transferred jurisdiction to the probate court; thus the Rules apply to this county. MJCR 1-2(d). Judge Lindsay Arthur of the Hennepin County District Court, Juvenile Division, recently proposed new rules of procedure for that court, and a District Court committee is now studying these rules with a view toward adoption. References to the Proposed Juvenile Court Rules for Hennepin County (Draft No. 2, Dec. 31, 1968) will be made throughout the Note.
12. Minn. Stat. ch. 260 (1967) [hereinafter referred to as “the Act,” “the statute,” or “the Juvenile Court Act.”].
13. See, e.g., MJCR 2-1 which provides that “[e]ach party to a juvenile cause shall have the right to be represented by counsel at any and all stages of the cause.” (emphasis added). Minn. Stat. § 260.155(2) (1967) gives parties the right to counsel at hearings held pursuant to the statute. By its terms, therefore, the Rules seem to widen the scope of right to counsel.
II. AUTHORITY AND APPLICATION OF THE RULES

Commenting on the question of whether the Minnesota Juvenile Court Rules have the force and effect of law, the office of the Attorney General has stated:

[W]hether these rules have the force and effect of law depends, of course, upon whether the judges have authority from the legislature to adopt the same. This question we decline to comment upon, feeling the matter should be more appropriately decided by the courts.\(^\text{14}\)

The reluctance of the Attorney General to determine the question of the Rules' authority is understandable. The law is marked by a dearth of decisions and the presence of ambiguous statutes on the subject of court rules generally and rules governing the probate-juvenile court in particular. It is important, nevertheless, to determine to what extent the rules are authorized because therein lies the key to much of their efficacy.

The threshold principle in this area of the law states that when a statute gives the courts jurisdiction over certain subjects but does not provide procedures to follow, the courts have the inherent power to adopt appropriate rules.\(^\text{15}\) It seems preferable, however, to find specific statutory authorization, for, as the Attorney General's comment suggests, rules authorized by the legislature are enveloped with a certain aura that gives them a more binding effect. The inherent power doctrine also may be read as entitling each individual juvenile court to formulate its own rules, and such an interpretation would defeat the desire for a uniform juvenile court procedure in the state.

Though there is no express statutory provision granting juvenile court judges the authority to promulgate juvenile court rules of procedure, probate court judges are authorized by section 525.06 of the Minnesota Statutes to formulate and adopt rules to govern all probate courts.\(^\text{16}\) Since the Minnesota Juvenile Judges Association, the promulgator of the Rules, consists of all the probate judges in the state, and because the pro-

\(^{14}\) Copy of letter from James J. O'Connor, Special Assistant to the Attorney General, State of Minnesota, Office of the The Attorney General, to Wallace C. Sieh, Mower County Attorney, August 6, 1969, on file at the office of the Minnesota Law Review.


\(^{16}\) Minn. Stat. § 525.06 (1967) provides in part:
The judges of the probate courts shall assemble each year at such places and times as may be designated . . . . When so assembled such judges shall formulate and adopt rules . . . . Such rules shall govern all the probate courts of this state . . . .
bate court is the juvenile court in all counties where these Rules are in effect,\textsuperscript{17} this statute seems to authorize the promulgation of juvenile court rules, albeit by a somewhat circuitous route. The argument is strengthened when one considers that the legislature has expressly granted rule making authority to all other courts in Minnesota,\textsuperscript{18} thus raising the implication that the legislature meant to provide the probate court judges with both probate and juvenile court rule making authority when it enacted section 525.06. Accordingly, the Minnesota Juvenile Judges Association formulated and adopted the Rules pursuant to section 525.06.\textsuperscript{19}

Assuming that section 525.06 provides statutory authority for promulgation of the Rules, there remains the question of whether the Rules are strictly binding upon individual juvenile court judges and appellate courts reviewing juvenile court orders. In other words, will noncompliance with the Rules be grounds for reversal of a juvenile court order? As a general proposition, court rules authorized by the legislature have the force and effect of law and thus are binding upon the courts,\textsuperscript{20} but several Minnesota decisions have modified this proposition. In 1950, the Minnesota Supreme Court stated:

\begin{quote}
[I]t has been recognized in this jurisdiction that the trial court in its sound discretion may in a particular case suspend the operation of its rules . . . . Court rules are adopted to expedite the administration of justice, and when in a particular case they fail of their purpose they may for cause be modified or suspended in the court's discretion.\textsuperscript{21}
\end{quote}

Similarly, the court in Swenson v. Swenson\textsuperscript{22} held that a minor deviation from the district court rules by the trial court was of no consequence where it did not operate in any way to the prejudice of a party. Apart from this precedent, there is language in

\begin{itemize}
  \item \textsuperscript{17} See note 11 supra.
  \item \textsuperscript{18} MINN. STAT. § 480.05 (1967) (rule-making authority to Supreme Court); MINN. STAT. § 484.33 (1967) (rule-making authority to district courts); MINN. STAT. ch. 488 (1967) (rule-making authority to municipal courts); MINN. STAT. § 525.06 (1967) (rule-making authority to probate courts); MINN. STAT. § 491.03 (1967) (procedure for conciliation courts).
  \item \textsuperscript{19} See MJCR Foreword.
  \item \textsuperscript{20} See, e.g., Rio Grande Irrigation Co. v. Gildersleeve, 174 U.S. 603 (1898).
  \item \textsuperscript{21} Thon v. Erickson, 232 Minn. 323, 524, 45 N.W.2d 560, 561 (1950).
  \item \textsuperscript{22} 257 Minn. 431, 101 N.W.2d 914 (1960). See also Saylor v. Sass, 258 Minn. 300, 104 N.W.2d 36 (1960) where the court held that compliance with court rules of the Duluth Municipal Court could be waived, either expressly or by conduct, by the party standing to benefit from them.
\end{itemize}
section 525.06 itself which specifically allows individual judges to relax or modify rules adopted by the judges when such will be "in furtherance of justice." This language and the prior decisions dealing with modifications of other species of court rules could support a holding that individual juvenile court judges may relax or modify the Rules and that such noncompliance will not be grounds for automatic reversal of a juvenile court order.

Such a holding, however, would be unwise. Juvenile court judges who oppose certain provisions of the Rules may use such authority to deny some children the protection of some of the more liberal provisions of the Rules under the guise of "furthering justice." Moreover, modification of the Rules will sacrifice uniformity and precision in juvenile court procedure, one of the avowed purposes of the Rules. Finally, whenever a violation of the Rules is alleged, appellate courts would be forced to determine whether or not such noncompliance prejudiced the child and thus would be forced to develop juvenile court procedural law on an ad hoc basis instead of relying on the Rules as a definitive statement of the rights of a child in juvenile court. It is submitted that the better view would be that noncompliance with the Rules is per se prejudicial and will invalidate a juvenile court order.

There is authority for such a determination, though it is not precisely on point. The United States Supreme Court seems to support the view that court rules are not to be relaxed or modified at the discretion of individual judges. The Court has stated:

A rule of the court thus authorized and made has the force of law, and is binding upon the court as well as upon parties to an action, and cannot be dispensed with to suit the circumstances of any particular case.

More recently, the Court in United States ex rel. Accardi v.
Shaugnessy held that petitioner's allegation that the Attorney General dictated the Immigration Board's decision in violation of the board's own regulations constituted a claim of denial of due process. The holding thus implies that rules adopted by an administrative agency are strictly binding upon it and that noncompliance with such rules invalidates an action of the agency. The logical extension of such a holding is that court rules are equally binding.

Similar viewpoints have been set forth by various state courts. In Halter v. Wade, for example, the Colorado Supreme Court held that no single judge has the power to ignore or waive the enforcement of a rule promulgated by the Denver District Court en banc. The court stated:

[The rule] was made to be enforced just as much so as if the legislature by statute enacted it, and in that case no court or judge could properly disobey it.

Other cases have held that court rules must be considered binding unless the rules themselves provide for modification or relaxation by an individual judge. In Collins v. Superior Court, the Arizona Supreme Court stated:

The general rule is that ... rules are binding alike upon the litigants and cannot be dispensed with to meet the exigencies in a particular case or to meet an apparent hardship, except when the rules themselves provide a method for such suspension, and then only in the manner so provided.

It should be noted here that while section 525.06 permits relaxation or modification, the Rules themselves do not. This, it could be argued, implies that the Juvenile Court Judges Association did not intend that its individual members have authority to relax or modify the Rules.

The above authority when coupled with the policy considerations previously discussed would seem to warrant the conclusions that the Rules may not be modified or relaxed at the discretion of individual juvenile court judges and that noncompliance with the Rules will be automatic grounds for reversal of a juvenile court order.

26. 85 Colo. 121, 273 P. 1042 (1928).
27. Id. at 124, 273 P. at 1044.
29. Id. at 395, 62 P.2d at 138.
III. SUBSTANTIVE PROVISIONS OF THE MINNESOTA JUVENILE COURT RULES

A. General

The Minnesota Juvenile Court Act and the Minnesota Juvenile Court Rules are similar to the statutes and rules of most other states in that they can be divided into five broad categories. First, there are those provisions which define, in terms of age and either conduct or status, persons subject to juvenile court jurisdiction. A second set of provisions governs the procedure to be followed when an individual, alleged to be within the jurisdiction of the juvenile court, comes to the attention of the police or the court itself. At this intake or pre-adjudication stage, the initial decision is made either to make informal adjustment or to refer the individual to the juvenile court. If the child is so referred, a third set of provisions provides for an adjudication hearing. At this stage of the process the court must determine whether the party is in fact within the jurisdiction of the juvenile court, and whether he has committed the acts, or is of the status, alleged. If the child is found to be delinquent, neglected, dependent or a traffic offender, the provisions providing for a disposition hearing take effect. The disposition hearing determines what treatment the individual will receive in order to fulfill the rehabilitative goal of the court. Finally, there are provisions authorizing review and appeal of juvenile court orders and disposition of the court’s records.

B. Defining Jurisdiction

1. Age

The Minnesota juvenile courts have original and exclusive jurisdiction over persons less than 18 years of age who are alleged to be delinquent, dependent, neglected or a traffic offender, and over those under 21 years of age alleged to have been delinquent or a traffic offender prior to their eighteenth birthday.  


31. President’s Comm’n on Law Enforcement and Ad. of Justice, Task Force Report, Juvenile Delinquency and Youth Crime 3-5 (1967) [hereinafter cited as Task Force].
grant the juvenile court a limited power to refer certain types of delinquency actions to the criminal courts. Both the Act and Rules provide for such reference if the child is alleged to have violated a state or local law or ordinance and is at least 14 years of age. The minimum age limit is arguably too low but unlike most jurisdictions the Rules set out criteria relevant to the referral decision.

2. Conduct or Status

One of the most persistent criticisms leveled at the juvenile court system is the breadth of the statutory definition of conduct or status which gives rise to juvenile court jurisdiction. It has been argued that the definitions are so broad that the insignificant, noninjurious acts of normal individuals can be the basis of a juvenile court finding of delinquency, neglect or dependency. Such findings may, in turn, result in the possibility of separating a child from his home and tainting him and his parents with the stigma attached to a juvenile court adjudication. The Minnesota Act, although amended in 1959 to narrow the definitions of delinquent, dependent and neglected children, still retains many deficiencies. One of the most serious is the definition of delinquency as a violation of any law or ordinance, regardless of whether the act evidences a delinquent disposition. Since rules of procedure cannot restrict statutory definitions, the Minnesota Rules can only reiterate the definitions contained in the statute. To rectify this deficiency, the Minnesota Legislature

34. MJCR 8-7(2). Cf. Task Force, supra note 31, at 4: "Written criteria to guide the judge in deciding whether or not to waive [jurisdiction] are rare. Where they do exist they are general." MJCR 8-2 & 8-6 specify other limitations on the authority to refer. Transfer or reference for prosecution is discussed at length in Note, Reference for Prosecution in Juvenile Court Proceedings, 54 Minn. L. Rev. 389 (1969).
36. See, e.g., In re Diaz, 212 La. 700, 33 So. 2d 201 (1947) (reversal of a juvenile court finding of neglect based on one incident where mother spanked baby in public).
37. See Pirsig, supra note 35, at 379-80.
38. See MJCR 1-2(e), (f), (m).
should amend the Act by further narrowing the definition of conduct which gives rise to juvenile court jurisdiction.

In addition, the Act and Rules both provide that the same tribunal has jurisdiction whether a child is alleged to be delinquent, dependent or neglected. This policy is justified on the theory that, regardless of the allegations contained in the petition, the sole purpose of the court is to insure the welfare of the child. A contrary view is that the juvenile court's jurisdiction should be limited to the delinquent child, and the neglected or dependent child should be referred to existing social agencies. Militating against such a policy, however, is the fact that a dependent or neglected child must often be taken from the custody of his parents in order to protect him, and it seems unwise to allow such a disposition without the procedural safeguards of a judicial hearing.

The recently approved Uniform Juvenile Court Act seems to have struck a balance between the two extremes. It provides for three classes of children subject to juvenile court jurisdiction: the delinquent child, the unruly child and the deprived child. The delinquent child, who is subject to commitment to an institution, is one who has violated any law and is in need of treatment or rehabilitation. The unruly child has committed an offense applicable only to children, such as truancy. He is also in need of treatment and rehabilitation and is subject to the same disposition as a delinquent child, short of commitment to an institution for delinquent children. The deprived child, analogous to the neglected child under Minnesota law, requires care or control for the welfare of his physical, mental or emotional health but his deprivation is not due primarily to the lack of financial means of his parents. This change in labels from "neglected" to "deprived" is said to ease the stigma attached to parents by a "neglect" adjudication and to focus attention on the needs of the child rather than on the fitness of the parent. More importantly, the definition eliminates poverty as a legitimate basis for a finding of deprivation and thereby helps to promote family stability in those homes most in need of it.

41. Nat'l Conference of Commissioners on Uniform State Laws, Uniform Juvenile Court Act (1968) [hereinafter cited as Uniform Juvenile Court Act].
42. Id. § 2(3).
43. Id. § 2(4).
44. Id. § 2(5).
45. Id. § 2, comments.
The Minnesota Act and the Rules apply the Uniform Act policy with respect to juvenile traffic offenders. Both Acts provide that a juvenile traffic offender cannot be adjudicated delinquent for the sole reason of having violated a traffic ordinance. Instead, such conduct will lead to an adjudication of the youth as a juvenile traffic offender and disposition will be limited to probation or a recommendation to the Motor Vehicle Commissioner that the youth's license be suspended. The stigma attached to delinquency is thus avoided and disposition is more likely to fit the conduct. The same procedure, it appears, could be applied to noncriminal juvenile behavior, such as truancy which can now be the basis for a finding of delinquency. Implementation of such a scheme, however, would seem to require legislative action, since the various categories of conduct or status are defined by statute.

The Minnesota Act and Rules also provide for a distinct cause of action for the termination of parental rights, apart from neglect or dependency causes. Termination of parental rights makes a child subject to adoption, which by statute confers upon him the legal status of a natural child of his adoptive parents. The finality and enormity of the consequences of such an adjudication have prompted both the Act and Rules to provide for a separate notice and hearing before termination can be effected.

47. See Winburn v. State, 32 Wis. 2d 152, 162, 145 N.W.2d 178, 183 (1966): "This court can take judicial notice that in common parlance juvenile delinquent is a term of opprobrium and it is not society's accolade bestowed on the successfully rehabilitated."
48. "To require the court to declare a juvenile to be a delinquent child and a ward of the court for the violation of a relatively minor traffic regulation is, in our opinion, too harsh a required sanction to be imposed." Lesperance v. Superior Court, 72 Wash. 2d 572, 575, 434 P.2d 602, 605 (1967).
51. Minn. Stat. § 260.111(2) (a) (1967) (grants juvenile court jurisdiction for termination of parental rights); Minn. Stat. § 260.221 (situations when termination of parental rights may be granted); Minn. Stat. § 260.241 (dispositional alternatives for a child who is the subject of a termination of parental rights cause); MJCR 3-5 (required contents for a petition in a termination of parental rights cause); MJCR 6-6 (dispositional alternatives for child who is the subject of a termination of parental rights cause).
52. In re Barron, 268 Minn. 48, 127 N.W.2d 702 (1964); cf. In re Zink, 269 Minn. 535, 132 N.W.2d 795 (1964); In re Shady, 264 Minn. 222, 118 N.W.2d 449 (1962).
even though there may have been a prior dependency or neglect adjudication.\textsuperscript{53}

In summary, the new Rules have no effect on the jurisdictional definitions of the Juvenile Court Act. They have simply restated the type of conduct which will bring a child within the jurisdiction of the court. Some modifications of this jurisdictional posture have been briefly advanced, but it seems clear that court rules are incapable of effecting them. Revision of the Juvenile Court Act, therefore, particularly with regard to the novel classifications contained in the Uniform Juvenile Court Act, should be seriously considered.

C. PRE-ADJUDICATION PROVISIONS

1. Intake

In a traditional sense, the intake phase of the juvenile court process is extra-judicial, since it involves the disposition of a child who is subject to juvenile court jurisdiction without formal court hearings or orders. Intake has been defined as

\begin{itemize}
  \item [a] process of . . . ascertaining which cases require no action, which require referral to other agencies, which can be benefitted and adjusted by treatment without judicial action, and which need judicial action.\textsuperscript{54}
\end{itemize}

This "screening" process is not administered solely by the court. Indeed, empirical studies reveal that the police are the initial screening agency in most cases.\textsuperscript{55}

Screening by the police and other nonjudicial agencies is of great concern to some observers of the juvenile court. The process does have many advantages:

\begin{itemize}
  \item Court caseloads are lightened; police develop a more positive attitude towards their role in curbing delinquency; juveniles have an opportunity to avoid court adjudication; and parental control may be strengthened by police support and by the spectre of possible referral to the juvenile court.\textsuperscript{56}
\end{itemize}

Yet the fear remains that the informal adjustments made by the police involve restrictions on a child’s freedom which neither fit the alleged misconduct nor encourage the child’s

\begin{itemize}
  \item This procedure meets the recommendation of the \textit{Advisory Council of Judges of the Nat'l Probation and Parole Ass'n, Guides for Juvenile Court Judges} 24 (1957).
  \item Id.
  \item Note, \textit{Juvenile Delinquents}, supra note 55, at 785.
\end{itemize}
rehabilitation. An additional fear is that, while ostensibly voluntary, the submission by the child or his parents to a display of authority at a time of stress is in fact coerced. An additional fear is that, while ostensibly voluntary, the submission by the child or his parents to a display of authority at a time of stress is in fact coerced. A resolution of this dilemma which would retain the benefits of informal police adjustment while providing safeguards to the alleged delinquent has not yet been reached. However, the increasing professionalism of urban police forces in providing trained, fair and sympathetic juvenile officers and the growing sophistication of modern youth mitigate against any inherent unfairness in the system. The extension of basic rights, such as right to counsel in the police station and closer analysis and supervision of police records, could also provide adequate safeguards. Improvement of informal police adjustment procedures would seem to be a fruitful area in which court rules could operate. They could, for example, set out criteria for police to use in deciding whether to refer cases or they could require courts to set up a liaison office staffed by a court representative with whom the police could confer. Unfortunately, the Minnesota Rules do not acknowledge the existence of this aspect of screening. As a consequence, individual juvenile judges are left with the ill-fitting responsibility of exerting leadership in improving and controlling this process.

In addition, neither the Act nor the Rules authorize specific intake procedures to be followed by the juvenile court in determining whether to proceed formally by the filing of a petition.

57. Id. at 780.
58. See Handler & Rosenheim, Privacy in Welfare: Public Assistance and Juvenile Justice, 31 Law & Contemp. Prob. 377, 408-09 (1966). The authors list several other measures which could improve and regulate informal police adjustment.
59. This discussion has confined itself to informal screening by the police of alleged delinquents. But dependency and neglect cases are, also, often first brought to the attention of the police. It has been reported that the Chicago police claim to refer dependency and neglect cases to social agencies immediately. Id. at 395-401. The authors, however, point out that immediate referrals are many times impossible and therefore the police will be forced to make some adjustment, especially in the emergency "child beating" cases. The moral is apparent—juvenile courts must become more aware of this adjustment made by police and other public agencies and begin to exert more direction and control over its operation.
60. Minn. Stat. §§ 260.131(1) & (2) (1967) provides that any "reputable person" having knowledge of a child who appears to be delinquent, neglected or dependent may file a petition with the juvenile court, and that the county attorney or any other person shall draft the petition on a showing of reasonable grounds to support it. MJCR 3-1 (1) (a), however, states that only the county attorney may draft such a petition.
or to attempt to adjust the case informally. Though some individual courts do have an intake office of sorts, the lack of express provisions in the Act and the Rules probably means that in many counties a child referred to the juvenile court usually faces the extremes of formal adjudication or dismissal.

As the President's Commission on Crime and Delinquency points out, however,

a great deal of juvenile misbehavior should be dealt with through alternatives to adjudication in accordance with an explicit policy to direct juvenile offenders away from formal adjudication and authoritative disposition and to nonjudicial institutions for guidance and other services . . . .

Improvements in the several stages of the predispositional process would result in more selective and discriminating judgments as to those who should be subjected to formal and authoritative surveillance in the interest of community protection.

Court rules are a particularly effective tool for making improvements in the predispositional process. They could, for example, prescribe that conferences or hearings take place prior to the formal filing of a petition, and authorize disposition based on consent decrees agreed upon by the court, the child and his parents.

Although neither the Minnesota Juvenile Court Act nor the Rules provide for any informal pre-petition adjustment, they both authorize informal disposition after the initial adjudicatory hearing in delinquency causes. The court may proceed with disposition without a formal order declaring the child delinquent if the child has admitted the allegations contained in the petition or there has been a hearing where the allegations have been duly proven. This informal disposition may extend for a period

61. Informal adjustment without the filing of a petition might include referral to a community agency, informal supervision by the probation staff, or simply a conference with a child and his parents.

62. In Anoka County, for example, police juvenile contacts are referred to a court referee who determines whether the formal process of the juvenile court should be used. If he does decide that a petition should be filed, the information is relayed to the county attorney who in turn drafts the petition. Interview with Robert Johnson, Jr., Ass't. County Attorney, Anoka County, Minnesota, in Anoka, Minnesota, June 17, 1969.

63. TASK FORCE, supra note 31, at 16.

64. See, e.g., UNIFORM JUVENILE COURT ACT, supra note 41, § 10 (1966); MICHIGAN JUVENILE COURT RULES (1969); NEW JERSEY JUVENILE AND DOMESTIC RELATIONS COURT RULES, PROCEDURE IN JUVENILE CAUSES 6:2-2, 6:3-2, 6:8, 6:9-1 (1969); N.Y. FAM. CT. ACT § 734 (McKinney 1962).

65. MINN. STAT. § 260.185(3) (1967); MJCR 5-4(1) (a).
of 90 days, after which the case is dismissed or a formal adjudication of delinquency is filed. An adjudication of delinquency with its attendant stigma may thereby be prevented, yet the child will receive some treatment or supervision from the juvenile court. There are several benefits to be gained through this procedure. The juvenile court itself determines that the alleged acts were committed by the child and that such acts render the child subject to juvenile court jurisdiction. Clearly the court rather than the county attorney, the police or other agency is best qualified to make this determination. The court, rather than another agency, will also determine disposition and presumably its experience and ability to research the child's background and environment will aid in the disposition decision.

Weighing against these considerations is the fact that this procedure nonetheless involves the filing of a petition and a formal court appearance—presumably a traumatic experience likely to result in the unnecessary stigma of delinquency. Moreover, this procedure does not provide a means by which trivial cases can be eliminated from court consideration.

A 1969 amendment to the Act eliminated a prior requirement that this non-adjudicatory alternative could be invoked only if the child had admitted the allegations of the petition. Presumably, such a requirement had been intended to protect the child by insuring that the allegations of the petition were true before allowing even this limited disposition. Another reason for such a qualification may have been the desire to restrict non-adjudicatory adjustment to those children with a proper attitude. But certainly, admission of the allegations is not conclusive proof of contrition and, even if it were, there is no proven correlation between contrition and successful adjustment. The child's attitude should be only one of several criteria considered by the court when deciding whether to invoke this disposition.

68. A valuable contribution to the Rules might have been a listing of criteria to consider when deciding whether to apply informal disposition. The six factors listed in the Manual of Procedure of the Youth Division of the Chicago Police Department, as noted in Handler & Rosenheim, supra note 58, at 408-09 are:
1. Type and seriousness of the offense.
2. The previous behavioral history of the juvenile.
3. Environmental factors, including the disposition and capacity of the juvenile.
Thus the decision to do away with the restriction is a sound one and should allow the juvenile court judges to make more use of this alternative to formal adjudication and disposition.

2. **Petition: Drafting, Filing and Contents**

The petition is the legal document by which a juvenile court cause is commenced. Its purpose is to give notice of the basis of the cause, including the conduct or status alleged and the fact of the court's jurisdiction. The Minnesota Act provides that "any reputable person" may initiate a petition if he has knowledge of a child who appears to be delinquent, neglected or dependent, and if he verifies the petition. In response to Gault, the Rules require a more specific petition, including a "clear and particularized statement of the facts on which the petitioner relies for the assertion that the child is" delinquent, neglected or dependent.

These requirements compare favorably with those of other states and in most cases are superior. New Jersey, for example, requires that the petition need only state the essential facts. Similarly, in Michigan the petition need only be of "sufficient clarity and specificity to reasonably apprise the parties of the matters concerning which court action is sought." An improvement that might be made in Minnesota is suggested by the New York statute which limits persons authorized to file a petition to a peace officer, parent or guardian, one who has suffered injury as a result of the alleged activity of the child or the recognized

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4. The attitudes of the parents and their "ability to provide the necessary supervision and guidance."
5. The attitude of the complainant.
6. Community resources.
71. 387 U.S. 1, 33 (1967).
72. See MJCR 3-2(1) (a) (iii), 3-2(1) (b) (ii), 3-3(1) (a) (ii), 3-3(1) (c) (iii), 3-4(1) (b) (iii), 3-4(1) (c) (iii). Cf. In re Hitzemann, 281 Minn. 275, 161 N.W.2d 542 (1968), which held sufficient a petition alleging simply that the appellant "did on October 3, 1966, at 8:46 p.m., at Montgomery Ward and Company in Sun Ray Shopping Center, steal two tires valued at approximately $50.00." Id. at 276, 161 N.W.2d at 543. Clearly this petition does not meet the requirements of MJCR 3-2 (1) (a) which states that the law or ordinance alleged to have been violated must be specified in the petition. The fact that the Rules were not in effect when the case was decided is likely to relegate Hitzemann to obscurity, at least as regards probate-juvenile court procedure.
agents of an institution or agency.\textsuperscript{75} Such a limitation may prevent the filing of meddlesome petitions by parties who are unduly concerned with a child's behavior or who are merely interested in the harassment of a child or his family. The New York statute, however, does not require that the petition be verified and thus might encourage unsupported allegations.

3. \textit{Summons and Notice}

The Minnesota Juvenile Court Act provides two means for the issuance and service of summons and notice upon parties to the cause. The court may issue a summons and have it served personally upon the parties,\textsuperscript{76} or it may make notice in lieu of personal service by delivering the summons by certified mail and publishing it for one week.\textsuperscript{77} The Rules provide for an alternative method which may be utilized prior to either of the statutory alternatives. To minimize the embarrassment attached to personal service by a sheriff who often makes service in a conspicuously marked car and in uniform, the Rules provide for notice in lieu of summons.\textsuperscript{78} The parties are informed of the petition by mail and are requested to appear before the court, at which time jurisdiction arises due to their presence. If the parties refuse to appear voluntarily, or if the notice does not reach them, resort must be had to personal service or mail-and-publication.

Persons required to be notified or summoned are identical, with one exception, in the Act and the Rules.\textsuperscript{79} The Rules provide that the court is required to make service of summons upon the subject of a delinquency cause, i.e. the child himself.\textsuperscript{80} This addition is necessitated by language in \textit{Gault} requiring that the child, as well as his parents or guardian, be notified.\textsuperscript{81}

\textsuperscript{75} N.Y. Fam. Ct. Act. § 733 (McKinney 1962).
\textsuperscript{76} Minn. Stat. § 260.135 (1967).
\textsuperscript{77} Minn. Stat. § 260.141 (1)(b) (1967).
\textsuperscript{78} MJCR 4-3.
\textsuperscript{79} Minn. Stat. §§ 260.135, 260.193 (2), 260.231 (3) (1967); MJCR 4-1. Persons summoned are required to be present; persons notified have a right, but are not required, to be present. The person who has custody or control of the child is summoned, and the parents are notified if they do not have custody or control. \textit{Id.}
\textsuperscript{80} MJCR 4-1(b). MJCR 4-6 qualifies this requirement by stating that the summons or notice shall be given to the parent on the child's behalf if the child is under 14 years of age.
\textsuperscript{81} \textit{In re Gault}, 387 U.S. 1, 33 (1967). Such a requirement is desirable to provide for those cases where the parents are hostile or indifferent to the interests of the child.
The Rules make significant additions to the required content of a summons and initial notice. These additions include a statement of the purposes and possible consequences of the scheduled adjudicatory hearing and a statement advising the person summoned of all his rights, including specific mention of the parties' right to counsel and the fact that an attorney will be appointed if a party desires but cannot afford one. The Rules state that a petition shall be attached to the summons in all causes except traffic offender causes, in contrast to the Act which states that the petition be attached or a summary of its allegations be set forth in the summons. It would seem that the only reason for not attaching a petition is the danger of compromising the secrecy of the cause or perhaps embarrassing or frightening the child. Neither of these reasons, however, sufficiently outweighs the desirability of allowing the child, his parents and his attorney to know exactly what is alleged so that they may intelligently prepare for the proceedings. To this end, the Rules also require that copies of notices be given to counsel representing any of the parties to the cause.

The Rules require that service be "sufficiently in advance of the hearing to which it relates to afford . . . a reasonable opportunity to prepare" and set a minimum period of 72 hours. This is in contrast to the Act which sets a minimum of 24 hours after personal service, five days after mailing of notice-in-lieu-of-personal service or 14 days if the party to be notified is out of state. The language of the Rules is similar to that used in Gault, and the 72 hour minimum seems to allow sufficient time to the parties while not unnecessarily delaying the commencement of proceedings. To prevent unnecessary delay, the blanket waiver provision provides that a child can waive service of process by consenting to waiver of his parents or guardian ad litem.

83. MJCR 4-2.
85. MJCR 4-7.
86. MJCR 4-4.
87. Minn. Stat. § 260.141(1) (a) & (b) (1967).
88. 387 U.S. 1, 33 (1967).
89. MJCR 1-5 (any right accorded a party by the Rules or the Act may be waived except the right to counsel at a reference for prosecution hearing and the right to nondisclosure of sealed records).
Neither the Act nor Rules provide for answers to petitions served on the parties. The Model Juvenile Rules are unique in that they provide for detailed responsive pleading.

Upon receipt of the petition, the parties may file an answer, admitting or denying any or all of the allegations of the petition. The answer may request more detailed allegations or may point out inconsistencies or gaps in the statement contained in the petition. No formal motion practice is provided, but if the complainant, the parties, and the probation officer can resolve misunderstandings and errors of fact before the hearing, the issues are narrowed and the areas of dispute in court sharpened.90

The rare cases in which such responsive pleading might expedite matters or provide more efficiency and clarity to the juvenile court process are far outweighed by the practical difficulties of allowing answers and motions with their attendant delays. Further, the fact situations upon which juvenile court cases are based are not so complex that clarification and narrowing of issues is required prior to the hearing. The decision not to provide for responsive pleading in the Rules thus seems sound.

D. ADJUDICATION PROVISIONS

Once service of summons and notice have been made on the interested parties, the juvenile court must hold an adjudicatory hearing. This hearing has a dual purpose. The court must determine whether the allegations, if proven, would constitute status or conduct sufficient to invoke jurisdiction. If jurisdiction is found, the court must then determine if the facts alleged in the petition are true. These hearings may be conducted either by the juvenile court judge or by a referee who has been appointed by the judge to assist him in his duties.91

1. Form of the Adjudication Hearing

The Juvenile Court Act expressly provides that “hearings on any matter shall be without a jury . . . .”92 Despite the re-

90. COUNCIL OF JUDGES, NAT'L COUNCIL ON CRIME AND DELINQUENCY, MODEL RULES FOR JUVENILE COURT, rule 7, Comment at 19 (1969). [hereinafter cited as MODEL RULES].

91. MINN. STAT. § 260.031(1) & (2) (1967); MJCR 1-6. The form of the hearing before a referee is the same as that before a judge. The referee, upon conclusion of the hearing, makes findings and recommendations to the judge. At the same time he informs the parties of his findings and recommendations and advises them of their right to appeal. If within three days the parties make no request for a hearing before the judge, the referee's findings and recommendations, if confirmed by written order of the judge, are final.

cent trend towards procedural safeguards, the majority of states do not provide the juvenile with the right to jury. The argument against affording such a right to juveniles is based on the desirability of retaining a relatively informal setting for juvenile court hearings. Informal hearings, it is claimed, are not only a less traumatic experience for the child but also aid in the rehabilitative process. According to the President's Task Force, in a jury trial or hearing,

formality becomes itself an end insofar as it helps instill in jurors a sense of the seriousness and solemnity of their duties. Moreover, the presence of a jury affects the whole process of dealing with evidence. Much of the reason for many restrictive rules of evidence... stems from the felt need to protect against a jury's susceptibility to prejudice and irrelevancies and its limited ability to distinguish between the more and less probative.

The argument in favor of juries, at least where the delinquency is based on an alleged commission of a major crime and the juvenile is subject to commitment, is a persuasive one, particularly in light of the recent Supreme Court decision of Duncan v. Louisiana. The Court held therein that the right to a jury

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Formal procedure is incompatible with the informal conference atmosphere required by the court to gain the confidence of child and parents, to elicit the pertinent facts of events, and to become familiar with the personalities of the parties, their emotional states, and the causes of the difficulty—all of which is of the utmost importance to a wise disposition of the case.

95. Task Force, supra note 31, at 38. See also, Paulsen, Fairness to the Juvenile Offender, 41 Minn. L. Rev. 547, 559 (1957); Welch, Delinquency Proceedings—Fundamental Fairness for the Accused in a Quasi-Criminal Forum, 50 Minn. L. Rev. 633, 690-92 (1966).

trial in serious criminal cases is fundamental and must be recognized by the states as a part of their obligation to provide due process of law. This holding, when coupled with the Gault requirement that juvenile court adjudicatory hearings furnish the essentials of due process to alleged delinquents, is strong precedent for extending some form of jury requirement to juvenile cases. Further support for such a proposition is found in the Court's assertion in Duncan that the right to jury trial is a necessary limiting or restraining influence on the power of the government in criminal proceedings. This spectre of untrammeled power has been observed in the juvenile courts as well:

There is increasing evidence that the informal procedures, contrary to the original expectation, may themselves constitute a further obstacle to effective treatment of the delinquent to the extent that they engender in the child a sense of injustice provoked by seemingly all-powerful and challengeless exercise of authority by judges and probation officers.

Arguably, therefore, the Duncan rationale for the requirement of a jury is as applicable to the juvenile court delinquency hearing as it is to the criminal trial. It is submitted that Duncan and Gault will lead to a limited right to a jury hearing—an appropriate result in light of the historical and sensible justifications supporting an adult's right to a jury trial.

The case of Debacker v. Brainerd recently brought the issue before the Supreme Court. The Nebraska Supreme Court had ruled that a juvenile alleged to be delinquent on the basis of a violation of the criminal law was not entitled to a jury at his adjudicatory hearing, and the juvenile appealed. The Court dismissed the appeal in a per curiam opinion, which noted that Duncan was held to have prospective application only and

97. See, e.g., Justice White's comments in Duncan v. Louisiana, 391 U.S. at 156:

Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge. . . . Beyond this, the jury trial provisions in the Federal and State Constitutions reflect a fundamental decision about the exercise of official power—a reluctance to entrust plenary powers over the life and liberty of the citizen to one judge or to a group of judges. Fear of unchecked power . . . found expression in the criminal law in this insistence upon community participation in the determination of guilt or innocence.


that Debacker's adjudicatory hearing was held prior to the Duncan decision. Justices Black and Douglas argued in dissent that the prospective-only application of Duncan was improper, and that on the merits, the sixth and fourteenth amendments require a jury hearing where the delinquency charged is based on an offense which would be a crime triable by a jury if the offender were an adult. Debacker thus leaves unresolved the difficult, timely and important question of whether a juvenile is entitled to a hearing by jury.¹⁰¹

2. Presentation of Evidence

The Minnesota Juvenile Court Act provides that the county attorney, at the request of the court, shall present the evidence in support of the petition in a juvenile court proceeding.¹⁰² This provision has been criticized as creating an atmosphere of prosecution in the adjudicatory hearing or at least promoting a more adversarial proceeding.¹⁰³ The Model Rules propose that the judge elicit testimony except where complex issues exist as to disputed facts. Even in those cases, the Model Rules would not have the state represented by the prosecutor's office.¹⁰⁴

¹⁰¹ Several other jurisdictions have already decided the question with varying results. See Peyton v. Nord, 78 N.M. 717, 437 P.2d 716 (1968) (juvenile charged with violation of state law is entitled to jury in juvenile court if offense is one which would be triable by jury if committed by adult); Commonwealth v. Johnson, 211 Pa. Super. 62, 234 A.2d 9 (1967) (denial of jury to juvenile on charge of rape not violative of juvenile's rights under sixth and fourteenth amendments); Estes v. Hopp, 73 Wash. 2d 272, 488 P.2d 205 (1968) (jury not constitutionally required in delinquency proceeding); Nieves v. United States, 280 F. Supp. 994 (S.D.N.Y. 1968) (Gault read to require availability of jury in any federal proceeding in which a youth is faced with incarceration for the commission of an act alleged to be violative of federal law).

The issue was previously before the United States Supreme Court in In re Whittington, 391 U.S. 341 (1968), where petitioner alleged that his adjudication of delinquency was unconstitutional inter alia because of a denial of jury and the use of a probable cause standard of proof. The Court vacated the lower court's finding affirming the adjudication of delinquency and remanded the case for consideration in light of Gault but gave no indication of its opinion on the jury issue.


¹⁰² Minn. Stat. § 260.155(3) (1967). MJCR 5-2(1), however, provides that presentation of evidence shall be made by the county attorney at the adjudicatory hearing. MJCR 6-4(1) permits the probation officer to present the evidence at the dispositional hearing.


¹⁰⁴ Model Rules, supra note 90, rule 24 and Comments at 56.
On the other hand, strong arguments can be advanced for the proposition that a party independent of the court staff should present the state's case. In any contested hearing, a judge is hard-pressed to play the dual role of advocate for the state and impartial fact finder. If the judge must frame questions and elicit testimony, it is questionable whether he will be able to analyze and reflect carefully upon the evidence presented. Perhaps equally important, the juvenile who is the subject of the cause will look with suspicion on the supposed impartiality of the judge, and his respect for the eventual adjudication and disposition will be diminished. These factors clearly outweigh any danger to the desired informality which may result from the actions of the prosecutor.

3. **Confidentiality of the Hearing**

Juvenile Court proceedings have traditionally been confidential, ostensibly for the purpose of preventing the stigma that might attach from public knowledge of adjudication or disposition. In addition, confidentiality may eliminate what is often a prime motive for the misconduct—an opportunity for the child to publicize his “daring” adventures. There are strong policy considerations, however, for permitting the juvenile court process to operate in full public view. Most frequently heard is the assertion that “you and I have a right to know the maraud-

105. See Fiqueroa Ruiz v. Delgado, 359 F.2d 718 (1st Cir. 1966), where the court held that the Puerto Rico procedure providing that the trial judge conduct the examination of prosecution witnesses and cross-examination of defense witnesses was violative of due process of law.

Under the procedure in the Puerto Rico District Court the judge must alternate roles in rapid succession, or even assume both at once. Thus, when interrogating a witness he is examining for the people, but when listening to the answer to the question he has propounded, he is weighing it as judge, and at the same time considering what question, as prosecutor, to ask next. Correspondingly, when he listens to the answer to a question put by the defense, he must, as judge, impartially evaluate the answer, but, simultaneously, as prosecutor, he must prepare the next question for cross-examination. The mental attitudes of the judge and prosecutor are at considerable variance. To keep these two personalities entirely distinct seems an almost impossible burden for even the most dedicated and fairminded of men.

Id. at 720.


ers in our neighborhood."\(^{108}\) The better view would seem to be that conducting proceedings in full view of the public will protect the child from arbitrary dispositions and other unfairness.\(^ {109}\) Many also contend that publicizing juvenile proceedings acts as a deterrent to other potential delinquents, and helps to rehabilitate the juvenile who is the subject of the publicity.\(^ {110}\) Obviously, no solution would fully resolve these conflicting considerations, but most juvenile courts have affected some sort of compromise. The Minnesota Act provides that the juvenile court "shall exclude the general public from these hearings and shall admit only those persons who, in the discretion of the court, have a direct interest in the case or in the work of the court."\(^ {111}\) It is unclear whether representatives of the press are included in this exception. In any event, the Rules do provide that unsealed records may be made available to "responsible representatives of public information media," provided that such representatives agree not to publicize the identity of the child or his parents.\(^ {112}\) Such a provision would seem to imply a right to observe the proceedings themselves.

4. Amendment of the Petition

In some cases, there will be a variance between the facts proved at the adjudicatory hearing and those alleged in the petition. There may also be some reason for amending or altering the petition prior to the hearing stage or after adjudication. The Act, while providing for the outright dismissal of a petition,\(^ {113}\) is silent on the matter of amendment or alteration. The Rules, however, specifically provide for amendment without the consent of any of the parties up to the time evidence is presented.

108. See Geis, supra note 107, at 152.
109. Arthur, supra note 107, at 214. But Judge Arthur points out, "a lawyer, a court reporter, and an appellate court can provide better protection." Id.
110. See, e.g., Loble, Montana's Experiment with Juvenile Crime, American Legion Magazine 50 (No. 6, Dec. 1963). But see Statement by the National Council on Crime and Delinquency, Open Hearings in Juvenile Courts in Montana (Nov. 1964): "In one short year . . . in the court presided over by [Judge Loble] there has been a 58 percent increase . . . in juvenile felony cases . . . ." noted in Arthur, supra note 107, at 213.
or at any time thereafter if all the parties consent. Since the county attorney is not a party within the definition of the Rules, presumably his consent is never required. Thus, he could not prevent the court from amending a petition by withholding consent, as he might be tempted to do if charges against a youth were reduced.

The extent of allowable changes, however, is not delineated by the Rules. Presumably a petition alleging delinquency could be altered to allege dependency and vice versa, or an allegation of delinquency based on a specific violation of law might be amended to allege delinquency based on waywardness. Such changes may be motivated by a desire to charge the child with a less serious allegation and restrict disposition alternatives. On the other hand, they may be made for the less benevolent reason of assuring a finding against a youth. The danger of surprise due to alteration prior to presentation of evidence, however, is mitigated by the Rules' provision for a continuance to prepare a defense responsive to the amended petition. After the introduction of evidence the dangers are mitigated by the Rules' consent requirement. A possible additional safeguard would be to require the consent of all parties at all times, but this could be easily circumvented by merely dropping the cause and filing a new petition setting forth the amended allegation. In fact, this ability to file a new petition makes the amending issue somewhat moot, at least as a matter of substance. However, the ability to amend does retain procedural vitality since it obviates the need for many of the technicalities incident to filing a new petition.

5. Requirement for Written Findings

The Supreme Court in Gault seemed particularly dismayed

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114. MJCR 3-6(1) & (2).
115. MJCR 1-2(o).
116. MJCR 1-2(o) does provide that a "party" means ... any other person designated by the court in a given cause" and thus arguably the county attorney could be named a party by the court. It seems doubtful, however, that a court would so provide.
117. Note, supra note 106, at 308. The authors point out, for example, that the juvenile court judge could change the allegation of a specific criminal violation to a general charge of misconduct in order to assure a finding against the youth. They point to a survey of 12 judges in which 10 replied they would alter a petition from theft, which could not be proven, to truancy or curfew violation if there were evidence that the child had been in the area of the robbery and was in need of some restraint. Id.
118. MJCR 3-8(3).
119. See note 114 supra.
with the lack of concrete factual findings to support the juvenile court judge's ultimate finding of delinquency. Such haphazard determinations are precluded by the Rules' requirement that an adjudicatory order be supported by written findings of fact upon which the judge relied for his adjudication order. This same requirement also applies to dispositional orders. Any additional work load for the courts caused by such requirements is clearly outweighed by the encouragement of precision and objectivity and the facilitation of appellate review.

E. Disposition Provisions of the Rules

1. Presentation of Evidence

The Rules provide that the county attorney or probation officer, rather than the judge, shall represent the state at the disposition hearing. Although this tends to formalize the procedure, it reinforces the judge's position of impartiality and objectivity. By allowing a probation officer to present evidence, however, a problem may be created if the officer later attempts to work with the child. If the officer has argued for a disposition which the child thinks is unfair or distasteful, the child will undoubtedly distrust the probation officer's later attempts to help him. On the other hand, probation officers would usually have compiled the reports and studies which are the basis for disposition, and arguably are best qualified to present them at the hearing.

2. Investigations and Reports

The foundation of the dispositional decision lies in the reports and investigations authorized by statute. The adoption of specific procedures applying to these reports and investigations is a major accomplishment of the Rules.

a. Type of Investigation or Report

In contrast to the Act, the Rules specify procedures for four different kinds of reports: a social study, a medical examination, a reference study and a traffic offender study. It would seem that everything that could possibly be helpful in determining

120. 387 U.S. 1, 8 (1967).
121. MJCR 5-4(2).
122. MJCR 6-6 states, "The court shall include in such order . . . findings which set forth the reasons why the court decided on the particular disposition embodied in its order, and the facts upon which such reasons were based."
123. MJCR 6-4(1).
the proper disposition of a child can fit into one of these categories. Thus there seems to be little danger that some information which might be helpful to the court is beyond the gathering authority of the probation staff or welfare board. While such broad authority to gather information may be regarded as hindering the policy of confidentiality, the insurance of proper disposition through the availability of all potentially relevant information is the preferable goal.

b. Persons Subject to Studies and Examinations

The Act's provision governing studies and examinations simply states that the court may request the probation officer or county welfare board to investigate the personal and family history of any minor within the jurisdiction of the court, or order such a minor to be examined by a physician, psychiatrist or psychologist. The Act does not authorize studies or examinations of a parent.

The Rules, however, do provide that a parent may be the subject of a social study or medical examination. With respect to a social study, the Rules state that the court may order a social study of the subject of the cause and further provide that the parent is the subject of the cause in a dependency, neglect or termination-of-parental-rights proceeding. Apparently, the parent's consent is not required. It is doubtful whether this power is a significant expansion of the statutory authority since the Act's authorization of a social study of the child will, in most cases, furnish the pertinent data about both child and parent. Nevertheless, it does widen the scope of the court's investigative powers and may prove beneficial in situations where the parent would object to being examined in the course of the child's social study.

More important is the provision relating to the medical examination of a parent, though unfortunately (and, for the Rules, uncharacteristically) the provision is not without some ambiguity. One interpretation is that a parent may be subjected to an examination only if he consents. The preferable and

127. See MJCR 10-1(2).
128. MJCR 10-2(2).
129. MJCR 10-2(1) and the last sentence of MJCR 10-2(2) construed together arguably may be interpreted as requiring a parent's consent before he is the subject of a medical examination. It should
more justifiable interpretation is that the court may order the medical examination of a parent without his consent in a dependency, neglect or termination-of-parental-rights cause provided the parent's physical or mental health is a relevant issue. Obviously in these causes the physical or mental condition of a parent may be relevant but for any number of reasons a parent might not consent to an examination. In such a case the court must have the authority to order the parent's examination if a proper disposition is to be effected.

It does seem clear that the Rules prohibit the examination of a parent without his consent in a delinquency or traffic offender cause. Such a prohibition appears appropriate since it will be an unusual case where the physical or mental condition of a parent has contributed to a child's delinquency or traffic offense. And even in such a case where the court suspects the medical status of a parent is relevant and he will not consent to an examination, it would be easy (and proper) to amend the petition to allege neglect and then order the examination.

c. Stage of Preparation

All investigations and reports, except the traffic offense and reference studies, can be made only after the allegations of the petition have either been admitted or proven in an adjudicatory hearing. The obvious purpose of such a restriction is to protect the privacy of a child or his parent who may not be within the jurisdiction of the juvenile court. At first, such a restriction appears to cause problems. For example, a petition may allege delinquency based on some type of misconduct and an ad-

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130. MJCR 10-2(2) states that the parent is the subject of a dependency, neglect or termination-of-parental-rights cause and that the child is the subject of a delinquency or traffic offender cause. It further provides that the subject of the cause may be ordered to undergo an examination when the allegations of the petition have been either admitted or proved. Finally, it states a “parent of the child who is the subject of the cause” (i.e. a parent of a delinquent or traffic offender) may not be subjected to an examination without his consent. The express requirement of consent when a parent is not the subject of a cause implies that when he is the subject of the cause, as in a dependency or neglect cause, his consent is not required. 131. See Minn. Stat. § 260.015(10) (1) (1967) which defines a neglected child as one coming “within the provisions of subdivision 5 [i.e. definition of delinquent], but whose conduct results in whole or in part from parental neglect.” 132. MJCR 10-2(2).
judication of delinquency results. Upon perusal of the social study, however, the court finds that the delinquency is directly related to a family situation so disruptive that a neglect or dependency finding would have been more appropriate. A number of remedies, however, then become available to facilitate a proper disposition of the child. The court may be able to amend, alter or dismiss the petition, and cause a neglect or dependency petition to be filed, or the adjudication of delinquency may be expunged, and the record thereof may be sealed. Thus, the inability to investigate prior to adjudication will not harm the child and the greater danger of unwarranted intrusion into the privacy of a child and his family is avoided.

d. Presentation of Reports and Examinations

Social studies and reports of medical examinations are hearsay evidence and, as such, inadmissible in criminal proceedings. The Supreme Court, however, has ruled that hearsay can be considered at the sentencing hearing following adjudication at trial, and this holding should certainly apply as well to a juvenile dispositional hearing, particularly when it is clearly separate from the adjudication hearing. Thus it seems well established that the hearsay objection may be met without the preparer of the report or study testifying in person as to the contents thereof. The Rules do provide, however, that the parties to a cause may inspect any such report or study, cross-examine the preparer of the report and introduce evidence contesting or clarifying data contained in the report. A suggested addition to this right of inspection is to provide the parties with copies of the report or study, with any costs to be borne by the requesting parties unless indigent.

3. Types of Disposition Authorized

Authorized disposition for children adjudicated delinquent

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133. See note 131 supra.
136. See, e.g., In re Halamuda, 85 Cal. App. 2d 219, 192 P.2d 781 (1948) (youth allowed to see and challenge accuracy of these documents is deprived of no constitutional protection).
137. If the parties are represented by counsel, such counsel may inspect the reports. Unrepresented parties may inspect the report themselves, except that "if the court deems it not in the best interests of the child for the child or parent to see all or any part of a report," it shall appoint counsel who may inspect. MJCR 10-5.
138. MJCR 10-5.
ranges from oral admonition to institutional commitment, and
between these two extremes lie a host of alternatives. The
lack of foster homes and other nonrestrictive facilities offering
an improved environment can impose a severe limitation on the
courts and often force a judge to choose between commitment
and returning the child to an unsuitable home. Occasionally,
however, it appears that the juvenile court does not make the
best use of the available resources.

The Rules, following the Act, make no distinction between
delinquency based on acts which would be criminal if committed
by an adult and delinquency based on conduct peculiar to juve-
niles, such as truancy. Several statutes require that delinquency
be based on the commission of a criminal act before commit-
ment can be ordered. Such a policy seems eminently sound,
particularly when one considers that many juvenile institutions
are little more than junior prisons.

The Minnesota Act does restrict the types of disposition
available for those children adjudged neglected or dependent.
No commitment may be ordered nor can any disposition, whether
protective supervision in the home or transfer of legal custody,
exceed a period of one year. The court may, however, renew
the disposition order until the child is 21 provided that a new
hearing is held.

If a child is adjudged a traffic offender, the juvenile court
may impose restrictions on his driver's license. If the child has
committed two offenses or "contributed" to an accident, his
license may be suspended until the age of 18 but the court
cannot order fines or commitment.

After termination of parental rights, the court may transfer
guardianship and legal custody to either a welfare agency, a
child placing agency or a reputable individual.

140. See, e.g., Minneapolis Tribune, March 18, 1969, at 19, col. 3,
which reports the commitment of a girl 14 years of age to an institution
after a finding of delinquency based on the child having run away
"four or five" times. Commitment was ordered despite the request of
an elementary school principal and his wife that they be given custody
of the child.
141. See, e.g., Uniform Juvenile Court Act, supra note 41, § 2(2)
(1968).
142. See generally Task Force, supra note 31, at 8.
F. APPEAL AND REVIEW PROVISIONS

1. Appeal of Juvenile Court Orders

In Gault, the Supreme Court reiterated that “this Court has not held that a State is required by the Federal Constitution ‘to provide appellate courts or a right to appellate review at all.’”146 Nevertheless, a respected juvenile court judge has written: “Appeal should be as of right. It should be readily available and financially feasible... Appeal is the only real protection against an improper trial court.”147

Notwithstanding the Supreme Court’s pronouncements, the Minnesota Act provides that “an appeal may be taken by the aggrieved person from a final order affecting a substantial right of the aggrieved person.”148 The statute is ambiguous as to whether an appeal can follow immediately upon the filing of an adjudicatory finding or whether it must await the dispositional order. The better view would seem to require a final dispositional order and such an interpretation is possible by arguing that an adjudicatory order affects no substantial right and thus cannot be appealed.149 Whether appeals are limited to the child who is the subject of the cause or whether his parents may also appeal depends on the definition of a “substantial right.” It would seem clear that the parents have a substantial right to custody of their child and thus may appeal an order divesting them of custody, but the phrase needs judicial clarification.

It should be noted that appeals from probate-juvenile court orders are heard de novo by the district court, whose orders in turn can be appealed to the Supreme Court in the same manner in which appeals are taken in other civil actions.150 District-juvenile court orders are appealable directly to the Supreme Court.151 The distinction in procedure probably results from the fact that probate-juvenile courts in some counties consist of a judge who is not an attorney.

The Rules might have defined an “aggrieved person” and determined whether appeal was possible only after the adjudication hearing or whether the appellant must wait until the

146. In re Gault, 387 U.S. 1, 58 (1967).
147. Arthur, supra note 107, at 217.
149. But see generally Note, Sealing of Juvenile Court Records, 54 Minn. L. Rev. 433 (1969) where it is argued that adjudication raises a stigma that may hinder or preclude subsequent employment.
court has ordered disposition. These issues must now await judicial determination.

2. **Review of the Disposition Order**

Two features of the juvenile court require that the dispositional orders be periodically reviewed. First, the juvenile court may exercise control over a child for the period of his minority; second, control or regulation of a child once he has been sufficiently rehabilitated would be contrary to the goal of the juvenile court which supposedly eschews deterrent or retributive treatment. Both the Act and the Rules provide for periodic review by the juvenile court of prior orders with respect to delinquency, neglect or dependency causes. Generally, a dispositional order shall be reviewed at least annually, or if for a period of less than one year, at least once prior to its expiration date. If a dispositional order transfers the legal custody of a child to the Youth Conservation Commission, to any licensed child placing agency or to the county welfare board, review is not required by the court. It will, however, be accomplished by those agencies pursuant to applicable regulations or statutes.

The review required by the Act and the Rules could arguably be made more frequent or timely. It is conceivable that a child could be placed on probation for 12 months and the review of the order made shortly before its automatic termination though the child had no need of probation after, for example, the third month. A better procedure would be to retain the current standards as a minimum but provide that persons subject to juvenile court orders shall have the right to petition for review. Such a privilege would not unduly burden the courts if it were restricted by barring petitions until a certain amount of time had elapsed and limiting the frequency of such petitions.

Upon review, the court may temper or dismiss the dispositional order without qualification, but can increase its severity only if a hearing which meets all the requirements of an adjudicatory hearing is held. The Rules do not provide any standards to guide the court in reducing or increasing the severity of a dispositional order. When a more severe order is sought, it would seem advisable to require some showing of misconduct beyond

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152. Minn. Stat. § 260.185(4) (1967); MJCR 6-7.
that which was the cause of the initial order. Indeed, the issue of double jeopardy must be considered if the severity of an order is increased without a showing of new misconduct.154

IV. CONCLUSION

There is no question that the Minnesota Juvenile Court Rules, as well as the Minnesota Juvenile Court Act, meet the requirements set forth by the United States Supreme Court for juvenile courts. As Dean Paulsen's introductory comment implies, however, revamping juvenile court procedure to meet the standards of constitutional due process or the procedural standards of criminal courts is not enough. What is needed is a far-ranging revision of the statutory scheme to include a redefinition of what conduct should be the basis for juvenile court jurisdiction. Even more urgently needed are drastic increases in financial support for the institutions, agencies and personnel charged with juvenile rehabilitation and imaginative, committed people with new ideas for solving this country's delinquency problem. Failure to meet these needs will insure growing numbers of neglected, malcontent and destructive young people.