

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

**ORDER OF ADOPTION**

Supreme Court No. 20190270

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**Proposed Amendments to Rules 2, 6, 9, 10.1, 11.1, 18.1  
and 20 of the North Dakota Rules of Juvenile Procedure**

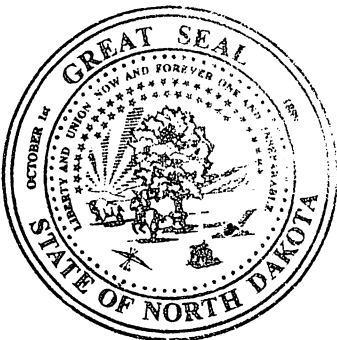
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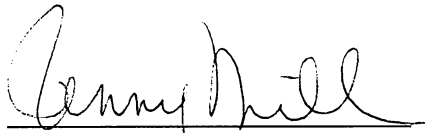
[¶1] On August 23, 2019, the Juvenile Policy Board filed a Petition with the Supreme Court proposing amendments to North Dakota Rules of Juvenile Procedure 2, 6, 9, 10.1, 11.1, 18.1 and 20. On August 28, 2019, a Notice of Comment was posted on the North Dakota Courts' website, and comments were accepted through September 16, 2019. The proposal is available at <https://www.ndcourts.gov/news/north-dakota/north-dakota-supreme-court/notices>. The Court considered the matter, and

[¶2] **IT IS ORDERED**, that the proposed amendments to N.D.R.Juv.P. 2, 6, 9 and 18.1 are ADOPTED as further amended by the Court, effective October 1, 2019.

[¶3] **IT IS FURTHER ORDERED**, that the proposed amendments to N.D.R.Juv.P. 10.1, 11.1 and 20 are ADOPTED as submitted, effective October 1, 2019.

[¶4] The Supreme Court of the State of North Dakota convened the 25<sup>th</sup> day of September, 2019, with the Honorable Gerald W. VandeWalle, Chief Justice, the Honorable Daniel J. Crothers, the Honorable Lisa Fair McEvers, the Honorable Jerod E. Tufte, and the Honorable Jon J. Jensen. Justices, directing the Clerk of the Supreme Court to enter the above order.



  
Penny Miller  
Clerk  
North Dakota Supreme Court

RULE 2. HEARING TIME

(a) Hearing Time.

(1) Detention Hearing.

(A) The court must hold a detention hearing within 24 hours of the time a child is placed in detention to determine whether there is probable cause that a child committed an offense and that continued detention is required.

(B) The court must make findings that alternatives to detention were considered and why secure detention was required and alternatives were not appropriate.

(C) If a case is not disposed of within 60 days and the child remains in detention, an additional detention hearing must be held to determine if the child's continued detention is required under N.D.C.C. § 27-20-14.

(2) Shelter Care Hearing. The court must hold a shelter care hearing within 96 hours of the time a child is placed in shelter care to determine whether there is probable cause for the child to remain in shelter care.

(3) Petition Hearing. After the petition has been filed, the court must set a hearing, except in a continued foster care matter under N.D.C.C. § 27-20-30.1, in which a hearing is optional.

(A) Unless a continuance is granted under Rule 2(c), the initial hearing on the petition must ~~not be held later than~~ within 30 days after the filing of the petition.

(B) If the child is in detention, the time for the initial hearing on the petition must

not be held within later than 14 days after the child has been taken into custody.

(C) If an initial hearing is held, the adjudication hearing must be held within 30 days of the initial hearing. Unless a continuance is granted under Rule 2(c).

(E D) If a child is in shelter care, the petition must be filed within 30 days after the child has been taken into shelter care. The hearing on the petition must be held and findings made within 60 days of the initial removal.

(b) Weekends and Holidays. If the period of time for a hearing expires on a Saturday, Sunday or legal holiday, the hearing must be held on the next day that is not a Saturday, Sunday or legal holiday.

(c) Continuance. The court may continue a hearing under Rule 9.

(d) Reliable Electronic Means. A judge or referee may conduct a hearing, conference, or other proceeding, or take testimony, by using contemporaneous audio or audiovisual transmission by reliable electronic means.

#### EXPLANATORY NOTE

Rule 2 was adopted effective March 1, 2010; amended effective May 1, 2015; amended effective October 1, 2019.

Paragraph (a)(1) was amended, effective May 1, 2015, to require the court to make findings on alternatives to detention and to require an additional detention hearing if a case is not disposed of within 60 days and the child remains in detention.

Paragraph (a)(3) was amended, effective May 1, 2015, to clarify that a petition hearing is not required in a continued foster care matter under N.D.C.C. § 27-20-30.1.

Paragraph (a)(3)(C) was amended, effective October 1, 2019, to clarify that, if an initial hearing is held, the adjudication hearing must occur within 30 days, unless a continuance is granted.

Subdivision (d) was added, effective May 1, 2015, to allow hearings and other proceedings involving children to be conducted using contemporaneous audio or audiovisual transmission by reliable electronic means. The standards in N.D. Sup. Ct. Admin. R. 52 apply when reliable electronic means are used.

SOURCES: Juvenile Policy Board Minutes of July 31, 2019, page ; June 21, 2019, page 1-2; April 12, 2019, page 1-2; March 22, 2019 page 4-5; September 5, 2014, page 2; February 20, 2009; August 8, 2008; May 9, 2008; February 29, 2008; September 21, 2007; April 20, 2007. Joint Procedure Committee Minutes of April 26, 2019, pages 10-12; January 29-30, 2015, pages 6-7; September 25-26, 2014, pages 4-5.

STATUTES AFFECTED:

SUPERSEDED: N.D.C.C. § 27-20-22.

CONSIDERED: N.D.C.C. §§ 27-20-14; 27-20-15; 27-20-16; 27-20-17.

CROSS REFERENCE: N.D.R.Juv.P. 9 (Continuance); Unified Judicial System Policy 409 (Juvenile Court Time Standards); N.D. Sup. Ct. Admin. R. 52 (Contemporaneous Transmission by Reliable Electronic Means).

RULE 6. SERVICE OF SUMMONS

(a) Personal Service.

(1) If a party to be served with a summons is within this state and can be found, the summons must be served on the party under Rule 4 of the North Dakota Rules of Civil Procedure at least twenty-four hours before the hearing.

(2) If the party is within this state and cannot be found, but the party's address is known or can with reasonable diligence be ascertained, the summons may be served upon the party by sending a copy by any form of mail or third-party commercial delivery addressed to the party and requiring a signed receipt and resulting in delivery to the party at least five days before the hearing.

(3) If the party is outside this state but can be found or the party's address is known, or the party's whereabouts or address can with reasonable diligence be ascertained, service of the summons may be made either by delivering a copy to the party personally or sending a copy to the party by any form of mail or third-party commercial delivery addressed to the party and requiring a signed receipt and resulting in delivery to the party at least five days before the hearing.

(b) Service by Publication. If after reasonable effort the party cannot be found or the party's post-office address ascertained, whether the party is within or without this state, the court may order service of the summons upon the party by publication:

(1) in a newspaper under Rule 4(e) of the North Dakota Rules of Civil Procedure;

22 or

23 (2) on a website designated by the court for that purpose:

24 (A) the summons must be posted on the website for three consecutive weeks;

25 (B) proof of posting on the website must be made by certification attaching a copy  
26 of the posted summons and the dates of posting;

27 The hearing must not be earlier than five days after the date of the last publication  
28 in a newspaper or on the website.

29 (c) Server Qualifications. Service of the summons may be made by any suitable  
30 person under the direction of the court.

31 (d) Payment of Costs. The court may authorize the payment from state funds of the  
32 costs of service and of necessary travel expenses incurred by persons summoned or  
33 otherwise required to appear at the hearing.

#### 34 EXPLANATORY NOTE

35 Rule 6 was adopted effective March 1, 2010; amended effective October 1, 2019.  
36 Subdivision (b) was amended, effective October 1, 2019, to allow service by  
37 publication on a website designated by the court.

38 SOURCES: Juvenile Policy Board Minutes of July 31, 2019, page ; June 21,  
39 2019, page 2; February 20, 2009; December 5, 2008; August 8, 2008; May 9, 2008;  
40 February 29, 2008; September 21, 2007; April 20, 2007. Joint Procedure Committee  
41 Minutes of April 26, 2019, pages 12-14.

42 STATUTES AFFECTED:

43 SUPERSEDED: N.D.C.C. § 27-20-23.

44 CROSS REFERENCE: N.D.R.Civ.P. 4 (Persons Subject to Jurisdiction - Process -  
45 Service).

RULE 9. CONTINUANCE

(a) Granting Continuance.

(1) In General. ~~The~~ On motion of a party or on the court's own motion, the court may continue a scheduled proceeding, hearing or adjudication to a later date so long as time requirements for resolution of the matter are not unduly delayed.

(2) Findings Required. Before granting a continuance, the court must make written findings or oral findings on the record that the continuance is necessary for the protection of the child, for accumulation or presentation of evidence or witnesses, to protect the rights of a party, or for other good cause shown.

(3) Notice. The court must, either in writing or orally on the record, provide notice to the parties of the date and time of the continued proceeding.

(b) Adjudication or Disposition. ~~An adjudication or disposition hearing may not be continued or adjourned except on written motion under Rule 14.~~ The court must make specific findings that the continuance or adjournment is in the best interests of the child or that other good cause for continuance has been shown.

(c) Existing Orders. Unless otherwise ordered, existing orders remain in full force and effect during a continuance. When a continuance is ordered, the court may make any interim orders that are in the best interests of the child.

EXPLANATORY NOTE

Rule 9 was adopted effective March 1, 2010; amended effective October 1, 2019.



22           The good cause standard in paragraph (a)(2) and subdivision (b) applies when a  
23 situation occurs that is not within the control of the party seeking the continuance. It does  
24 not apply when there is fault, excusable or otherwise, on the part of the party seeking the  
25 continuance.

26           Subdivision (a) was amended, effective October 1, 2019, to allow a continuance to  
27 be granted on motion of a party or on the court's own motion.

28           Subdivision (b) was amended, effective October 1, 2019, to allow continuance of  
29 an adjudication or disposition hearing when good cause is shown.

30           SOURCES: Juvenile Policy Board Minutes of July 31, 2019, page     ; June 21,  
31 2019, page 1; February 20, 2009; December 5, 2008; August 8, 2008; May 9, 2008;  
32 February 29, 2008; September 21, 2007; April 20, 2007. Joint Procedure Committee  
33 Minutes of April 26, 2019, pages 10-12.

34           STATUTES AFFECTED:

35           CROSS REFERENCE: N.D.R.Juv.P. 14 (Motions); Unified Judicial System  
36 Policy 409 (Juvenile Court Time Standards).

RULE 10.1. USE OF RESTRAINTS IN COURTROOM

(a) Definition. "Restraint" means an instrument of physical restraint, including handcuffs, chains, irons and straight jackets.

(b) In General. Restraints must be removed prior to a courtroom proceeding unless a party or the detention, transport or juvenile court office staff request a finding by the court that the child poses an immediate and serious risk of dangerous or disruptive behavior or of escape or flight.

(c) Evidence. The party requesting the use of restraints in the courtroom must provide the court and the parties with facts to support a finding requiring use of restraints. The child must be given an opportunity to be heard regarding the use of restraints.

(d) Restraint Factors. Factors that may be considered by the court in reviewing a request for the child to remain in restraints during a courtroom proceeding include:

- (1) the child's record;
- (2) the child's temperament;
- (3) the desperateness of the child's situation;
- (4) the security situation at the courtroom and courthouse, including special security needs or escape risks;
- (5) the child's physical condition; and
- (6) whether there is an alternate means of providing security that would be less prejudicial to the child.

22           (e) Findings Required. If the court orders the use of restraints, the court must make  
23 case-specific findings of fact on the record in support of the order.

24                                   EXPLANATORY NOTE

25           Rule 10.1 was adopted effective March 1, 2017 as Rule 20. It was renumbered  
26 effective October 1, 2019.

27           SOURCES: Juvenile Policy Board Minutes of July 31, 2019, page; June 21, 2019,  
28 page 3. Joint Procedure Committee Minutes of April 26, 2019, page 19; September 24-25,  
29 2015, pages 24-25.

RULE 11.1 CHILD COMPETENCY TO PROCEED; NOTICE OF DEFENSE BASED  
ON MENTAL CONDITION; MENTAL EXAMINATION

(a) Proceeding when Child is Believed to be Incompetent.

(1) Authority to Order Evaluation of Child Competence. Any time after a petition is filed and before the final disposition of a case, if doubt arises as to the competence of a child, the juvenile court must suspend the case until the question of competence is determined. The court may order the child to submit to an examination by one or more mental health professionals retained by the state to determine competency. A child is incompetent and may not be permitted to admit to a delinquent or unruly offense, be tried, or receive a disposition for any offense when the child lacks sufficient ability to:

(A) appreciate the allegations against the child;

(B) appreciate the range and nature of possible dispositions that may be imposed in the proceedings against the child;

(C) understand the nature of the juvenile court process;

(D) disclose to counsel facts pertinent to the proceedings at issue;

(E) display appropriate courtroom behavior; or

(F) testify relevantly.

(2) Counsel. Any child subject to competency proceedings must be represented by counsel.

(3) Proceedings. The state's attorney, the child's counsel or the court may bring a

motion to determine the competency of the child. The motion must set forth the facts  
constituting the basis for the motion but the child's counsel may not divulge  
communications in violation of the attorney-client privilege. The bringing of the motion  
by the child's counsel does not waive the attorney-client privilege. Any such motion may  
be brought over the objection of the child.

(4) Report of Examination. Within 30 days, the examiner must file a written report  
with the court, and the court must provide a copy to the state's attorney and child's  
counsel. The report contents may not be otherwise disclosed until the hearing on the  
child's competency. The report must include:

(A) a description of the procedures, techniques and tests used in the evaluation of  
the child and the purposes of each;

(B) any clinical observations, findings and opinions of the examiner on each issue  
referred by the court for evaluation;

(C) any recommended treatment or education for the child to attain competence;

(D) an assessment of the likelihood that the child will attain competence under the  
recommended treatment or education;

(E) an assessment of the probable duration of the treatment or education required  
to attain competence;

(G) consideration of whether the child is a danger to himself, herself or society;

(F) if the examiner recommends treatment for the child to attain competence, a  
recommendation as to whether services can best be provided to the child as an outpatient

43 or inpatient, or by commitment to an institution for persons with intellectual disabilities or  
44 mental illness.

45 (5) Hearing and Determination of Competency. Upon receipt of the report of  
46 examination and notice to the parties, the court must hold a hearing within 10 days to  
47 review the report with the parties. If either party objects to the report's conclusion  
48 regarding the child's competency to proceed, the court must hold a hearing within 10 days  
49 on the issue of the child's competency to proceed.

50 (A) Finding of Competency. If the court determines that the child is competent by  
51 the greater weight of evidence, the court must enter a written order finding competency  
52 and the proceedings against the child must resume.

53 (B) Findings of Incompetency. Immediately upon a finding of incompetency of  
54 the child, the court must determine whether:

55 (i) the child is danger to himself, herself or society;  
56 (ii) providing services to the child will assist the child in attaining competence;  
57 (iii) any services provided to the child can best be provided as an outpatient or  
58 inpatient, by commitment to an institution for persons with intellectual disabilities or  
59 mental illness or as otherwise allowed by law.

60 (6) Dismissal of Delinquency Proceedings. The court has the discretion to:

61 (A) Dismiss the delinquency proceedings against the child and order the release of  
62 the child to the child's parent(s), guardian or legal custodian upon conditions considered  
63 appropriate by the court.

64 (B) Suspend the delinquency proceedings against the child for a period of up to  
65 one year and order services be provided to the child as an outpatient or inpatient, by  
66 commitment to an institution for persons with intellectual disabilities or mental illness.

67 (C) Dismiss the delinquency proceedings and direct that child deprivation  
68 proceedings be initiated.

69 (b) Notice of Defense Based on Lack of Responsibility. A child alleged to be  
70 delinquent or unruly who intends to assert lack of responsibility by reason of mental  
71 disease or defect must serve written notice on the state of any intended lack of  
72 responsibility defense within the time designated in the scheduling order for making  
73 motions or afterward as the court directs. A child who fails to do so cannot later claim  
74 lack of responsibility. The court may, for good cause, allow a child to file the notice late,  
75 grant additional trial-preparation time, or make other appropriate orders.

76 (1) Notice of Evidence of Mental Disease or Defect. If a child alleged to be  
77 delinquent or unruly intends to introduce evidence relating to a mental disease or defect  
78 or any other mental condition of the child bearing on the issue of whether the child had  
79 the mental state required for the alleged delinquent or unruly act, the child must—within  
80 the time designated in the scheduling order for making motions or afterward as the court  
81 directs—notify the state in writing of this intention and file the notice. The court may, for  
82 good cause, allow the child to file the notice late, grant the parties additional  
83 trial-preparation time, or make other appropriate orders.

84 (2) Failure to Comply. If the child fails to give notice under Rule 11.1(b) or does

not submit to an examination when ordered, the court may exclude any evidence from the child on the issue of the child's mental disease, mental defect, or any other mental condition bearing on the child's responsibility for the alleged delinquent or unruly act.

(3) Inadmissibility of Withdrawn Intention. Evidence of an intention of which notice was given under Rule 11.1(a) or (b), later withdrawn, is not, in any proceeding, admissible against the child who gave notice of the intention.

(c) Inadmissibility of a Child's Statements. No statement made by a child in the course of any examination conducted under this rule (whether conducted with or without the child's consent), no testimony based on the statement, and no other fruits of the statement may be admitted in evidence against the child in any proceeding except on an issue regarding mental condition on which the child has introduced evidence.

(d) Simultaneous Examinations. The court may order a competency examination under Rule 11.1(a), and an examination based on lack of responsibility under Rule 11.1(b) to all be conducted simultaneously.

#### EXPLANATORY NOTE

Rule 11.1 was adopted effective October 1, 2019.

SOURCES: Juvenile Policy Board Minutes of July 31, 2019, page     ; June 21, 2019, pages 2-3; March 22, 2019, page 2; December 7, 2018, page 2; September 14, 2018, page 3; March 23, 2018, pages 3-4; December 15, 2017, page 3. Joint Procedure Committee Minutes of April 26, 2019, pages 14-17.

STATUTES AFFECTED:



106           CONSIDERED: N.D.C.C. § 27-20-28.

107           CROSS REFERENCE: N.D.R.Crim.P. 12.2 (Notice of Defense Based on Mental

108   Condition; Mental Examination).

RULE 18.1. REVIEW OF PLACEMENT IN RESIDENTIAL TREATMENT

(a) Definitions. In this rule:

(1) “the agency” means the human service zone, unless another entity is designated by the department of human services;

(2) “assessment” means a fact finding process designed to provide information that enables a determination to be made that as to whether or not placement in a qualified residential treatment program is appropriate;

(3) “placement” means removal from a residence to an out-of-home treatment program;

(4) “qualified individual” means a trained professional or licensed clinician who is not an employee of a IV-E agency or affiliated with any placement setting;

(6) “qualified residential treatment program” means a licensed or approved residence providing an out-of-home treatment placement for children including the following required components:

(A) a trauma-informed treatment model;

(B) licensed and accredited by one of the three HHS approved accreditors;

(C) registered or licensed nursing staff and other licensed clinical staff available 24 hours and 7 days a week;

(D) family engagement and outreach, including siblings, in the child’s treatment;  
and

22 (E) discharge planning and family-based aftercare supports for at least six months  
23 post-discharge.

24 (b) Review Required. Upon a placement of a child in a qualified residential  
25 treatment program, a qualified individual must conduct an assessment of the strengths and  
26 needs of the child using an age-appropriate, evidence-based, validated, functional  
27 assessment tool and an assessment of whether the placement matches the child's needs.

28 (c) Reporting. The qualified individual conducting the assessment must submit the  
29 assessment results and any other supporting documentation to the Juvenile Court Director  
30 or designee within 10 days of completion of the assessment. Within five working days of  
31 receipt of the assessment, the Juvenile Court Director or designee must complete the  
32 review and decide whether to approve the placement. The review decision must be  
33 immediately filed with the court and copies provided to all parties by the juvenile court.

34 (d) Disposition.

35 (1) If approved, placement continues until the child is released from that level of  
36 care or another review is necessary based on continued time in qualified residential  
37 treatment program placement.

38 (2) If the placement is not approved by the Juvenile Court Director or designee, a  
39 hearing before the juvenile court must be held within 60 days of the initial placement.

40 (3) The agency must move the child to an appropriate level of care within 30 days  
41 if the court determines the placement is not appropriate.

42 (e) Review of Placement Approval. Any party to the case may request a juvenile

43 court hearing on the placement decision of a Juvenile Court Director or designee. A  
44 request for a hearing must be made in writing, state the reasons for the request, and be  
45 filed with the court.

46 (f) Status Review. A status review to determine progress towards returning the  
47 child home and whether continued placement at a qualified residential treatment program  
48 is necessary will occur every 90 days after the initial review and will follow the same  
49 process as the initial review.

50 EXPLANATORY NOTE

51 Rule 18.1 was adopted effective October 1, 2019.

52 SOURCES: Juvenile Policy Board Minutes of July 31, 2019, page ; June 21,  
53 2019, page 3; April 12, 2019, page 2; March 22, 2019, page 2-4. Joint Procedure  
54 Committee Minutes of April 26, 2019, pages 17-19.

RULE 20 ~~USE OF RESTRAINTS IN COURTROOM~~ [RESERVED]

(a) ~~Definition. "Restraint" means an instrument of physical restraint, including handcuffs, chains, irons and straight jackets.~~

(b) ~~In General. Restraints must be removed prior to a courtroom proceeding unless a party or the detention, transport or juvenile court office staff request a finding by the court that the child poses an immediate and serious risk of dangerous or disruptive behavior or of escape or flight.~~

(c) ~~Evidence. The party requesting the use of restraints in the courtroom must provide the court and the parties with facts to support a finding requiring use of restraints. The child must be given an opportunity to be heard regarding the use of restraints.~~

(d) ~~Restraint Factors. Factors that may be considered by the court in reviewing a request for the child to remain in restraints during a courtroom proceeding include:~~

- ~~(1) the child's record;~~
- ~~(2) the child's temperament;~~
- ~~(3) the desperateness of the child's situation;~~
- ~~(4) the security situation at the courtroom and courthouse, including special security needs or escape risks;~~
- ~~(5) the child's physical condition; and~~
- ~~(6) whether there is an alternate means of providing security that would be less prejudicial to the child.~~

~~(e) Findings Required. If the court orders the use of restraints, the court must make case-specific findings of fact on the record in support of the order.~~

~~EXPLANATORY NOTE~~

~~Rule 20 was adopted effective March 1, 2017.~~

~~SOURCES: Joint Procedure Committee Minutes of September 24-25, 2015, pages 24-25.~~