

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

ORDER OF ADOPTION

Supreme Court No. 20210174

Amendments to North Dakota Rules of Juvenile Procedure 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 11.1, 12, 13, 15, 16, 17, 18, 19

¶1 On June 23, 2021, this Court adopted amendments North Dakota Rules of Juvenile Procedure 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 11.1, 12, 13, 15, 16, 17, 18, and 19 effective July 1, 2021, subject to a 30-day public comment period. North Dakota Rules of Juvenile Procedure 2 was not adopted at that time but was posted for public comment. The proposal is available at <https://www.ndcourts.gov/supreme-court/dockets/20210174>. The comment period for all rules expired July 23, 2021. Individuals who do not have internet access may contact the Office of the Clerk of the Supreme Court to obtain a copy of the proposal. The Court considered the matter, and

¶2 IT IS HEREBY ORDERED, that no additional amendments are made to North Dakota Rules of Juvenile Procedure 1, 3, 4, 5, 6, 7, 8, 9, 10, 11.1, 13, 15, 16, 17, 18, and 19.

¶3 IT IS FURTHER ORDERED that additional amendments North Dakota Rules of Juvenile Procedure 11 and 12 are ADOPTED effective immediately.

¶4 IT IS FURTHER ORDERED that the amendments North Dakota Rule of Juvenile Procedure 2 are ADOPTED effective immediately.

¶5 The Supreme Court of the State of North Dakota convened this 29th day of July, 2021, with, the Honorable Jon J. Jensen, Chief Justice, and the Honorable Gerald W. VandeWalle, the Honorable Daniel J. Crothers, the Honorable Lisa Fair McEvers, the Honorable Jerod E. Tufte, Justices, directing the Clerk of the Supreme Court to enter the above order.

/s/ Petra H. Mandigo Hulm
Clerk
North Dakota Supreme Court

RULE 11. NOTICE OF ALIBI DEFENSE

(a) Notice by Child. A child alleged to be delinquent ~~or unruly~~ who intends to offer an alibi defense must serve written notice on the state of any intended alibi defense within the time designated in the scheduling order for making motions or afterward as the court directs. The notice must state:

(1) each specific place where the child claims to have been at the time of the alleged delinquent ~~or unruly~~ act; and

(2) the name, address, and telephone number, if any, of each witness on whom the child intends to rely.

(b) Notice by State.

(1) Disclosure. If the child serves a notice of alibi, the state must disclose in writing to the child or the child's attorney:

(A) the name, address, and telephone number, if any, of each witness the state intends to rely on to establish the child's presence at the scene of the alleged delinquent ~~or unruly~~ act; and

(B) each state rebuttal witness to the child's alibi defense.

(2) Time to Disclose. Unless the court directs otherwise, the state must give its disclosure within 10 days after the child serves notice of an intended alibi defense.

(c) Continuing Duty to Disclose. Both the child and the state must promptly disclose in writing to the other party the name, address, and telephone number, if any, of each additional witness if:

(1) the disclosing party learns of the witness before or during the adjudication; and

(2) the witness should have been disclosed if the disclosing party had known of the

24 witness earlier.

25 (d) Exceptions. For good cause, the court may grant an exception to any requirement of
26 this rule.

27 (e) Failure to Comply. If a party fails to comply with this rule, the court may exclude the
28 testimony of any undisclosed witness regarding the child's alibi. This rule does not limit the
29 child's right to testify.

30 (f) Inadmissibility of Withdrawn Alibi. Evidence of an intention to rely on an alibi, later
31 withdrawn, or of a statement made in connection with that intention, is not admissible in any
32 proceeding against the person who gave notice of the intention.

33 EXPLANATORY NOTE

34 Rule 11 was adopted effective March 1, 2010; amended effective _____.

35 Rule 11 was amended, effective _____, to update terminology and
36 statutory references consistent with the July 1, 2021, amendments to the Juvenile Court
37 Act, N.D.C.C. chs. 27-20.2, 27- 20.3, and 27-20.4.

38 SOURCES: Juvenile Policy Board Minutes of June 11, 2021; February 20, 2009;
39 December 5, 2008; August 8, 2008; May 9, 2008; February 29, 2008; September 21, 2007; April
40 20, 2007.

RULE 12. DISCOVERY

(a) Discovery in ~~Deprivation~~ Child in Need of Protection and Termination of Parental Rights Proceedings

(1) Request for Discovery. On written request, each party of whom discovery is requested must, to the extent not privileged or prohibited by statute, rule, or regulation, produce promptly for inspection, copying, or photographing the following information, documents, and material in that party's custody, control, or possession:

(A) the names and last known addresses of each witness to the occurrence that forms the basis of the allegation or defense;

(B) copies of any written statements made by any party or witness;

(C) transcriptions, recordings, and summaries of any oral statements of any party or witness, except the work product of counsel;

(D) any scientific or other reports that a party intends to introduce at the hearing or that pertain to physical evidence that a party intends to introduce;

(E) photographs and any physical evidence which a party intends to introduce at the hearing; and

(F) other evidence favorable to the requesting party and relevant to the subject matter involved in the pending action.

(2) Continuing Duty to Disclose. A party who discovers additional evidence or material must promptly disclose it to the other party or the court if:

(A) the evidence or material is subject to discovery or inspection under this rule; and

(B) the other party previously requested, or the court ordered, its production.

24 (3) Order Granting Discovery; Limitations; Sanctions.

25 (A) Motion to Compel. If a request for discovery is refused, application may be made to
26 the court for a written order granting the discovery. Motions for discovery must certify that a
27 request for discovery has been made and refused.

28 (B) Reciprocal Discovery. An order granting discovery may make such discovery
29 reciprocal for all parties to the proceeding, including the party requesting discovery.

30 (C) Limitations on Discovery. On its own or on a party's motion, the court may deny,
31 limit, or set conditions on discovery if granting discovery may:

32 (i) jeopardize the safety of a party, witness, or confidential informant;

33 (ii) result in the production of perjured testimony or evidence;

34 (iii) endanger the existence of physical evidence; or

35 (iv) violate a privileged communication.

36 (D) Failure to Comply. If at any time during the course of the proceedings, a party brings
37 to the attention of the court that a person has failed to comply with an order issued under this
38 rule, the court may grant a continuance, prohibit the person from introducing in evidence the
39 material not disclosed, or enter an order appropriate under the circumstances.

40 (b) Discovery in Delinquency and ~~Unruly Child~~ Proceedings.

41 (1) Disclosure by Prosecution Without Order of Court. Upon a written request of the
42 child's counsel, the prosecution must promptly disclose the following:

43 (A) Hearing Witnesses. The names and addresses of the persons the prosecution intends
44 to call as witnesses at the hearing. The prosecution must permit the child's counsel to inspect and
45 copy the witnesses' relevant written or recorded statements and any written summaries of the
46 substance of relevant oral statements made by the witnesses to the prosecution or agents of the

47 prosecution within the knowledge of the prosecution.

48 (B) Statements of Child and Accomplices. The prosecution must disclose and permit the
49 child's counsel to inspect and copy any relevant written or recorded statements made by the child
50 and accomplices within the possession or control of the prosecution, the existence of which is
51 known by the prosecution, and must provide the child's counsel with the substance of any oral
52 statements made by the child and accomplices that the prosecution intends to offer in evidence at
53 the hearing.

54 (C) Documents and Tangible Objects. The prosecution must disclose and permit the
55 child's counsel to inspect and copy books, papers, documents, data, photographs, tangible
56 objects, buildings, or places, or copies or portions of any of these items, if the item is within the
57 prosecution's possession, custody, or control, and:

58 (i) the item is material to preparing the child's defense;

59 (ii) the prosecution intends to use the item in its case-in-chief at the hearing; or

60 (iii) the item was obtained from or belongs to the child.

61 (D) Reports of Examinations and Tests. The prosecution must disclose and permit the
62 child's counsel to inspect and copy any results or reports of physical or mental examinations,
63 scientific tests, experiments or comparisons made that are relevant to the case.

64 (E) Record of the Child. The prosecution must inform the child's counsel of any prior
65 allegations of delinquency which have been proved and of prior adjudications of delinquency of
66 the child within the possession or control of the prosecution.

67 (F) Special Education and School Disciplinary Records. The prosecution must disclose
68 and permit the child's counsel to inspect and copy all special education and school disciplinary
69 records of the child, which were transmitted by the agency reporting the crime for consideration

70 in charging.

71 (G) Exculpatory Information. The prosecution must disclose to the child's counsel all
72 evidence, known or that may become known to the prosecution, favorable to the child and
73 material either to adjudication or disposition.

74 (H) Scope of the Prosecution's Obligations. The prosecution's obligations under this rule
75 extend to material and information in the possession or control of members of the prosecuting
76 attorney's staff and of any others who have participated in the investigation or evaluation of the
77 matter and who report to the prosecuting attorney's office.

78 (2) Disclosure by Prosecution on Order of Court. Upon motion of the child's counsel, the
79 court at any time before the hearing may require the prosecution to disclose to the child's counsel
80 any information requested that is relevant to guilt, innocence or culpability of the child. If the
81 motion is denied, the court on application of the child must inspect and preserve any relevant
82 information.

83 (3) Information Not Subject to Disclosure by Prosecution.

84 (A) Opinions, Theories or Conclusions. Unless otherwise provided by these rules, any
85 legal research, records, correspondence, reports or memoranda to the extent that they contain the
86 opinions, theories or conclusions of the prosecution or members of the prosecution's staff or
87 officials or agents of the prosecution participating in the matter are not subject to disclosure.

88 (B) Reports. Except as provided in subparagraphs (b)(1)(C) and (D), reports, memoranda
89 or internal documents made by the prosecution or members of the prosecution's staff or by agents
90 of the prosecution in connection with the matter are not subject to disclosure.

91 (4) Disclosure by Child Without Order of Court. Upon the prosecution's written request,
92 the child's counsel must promptly disclose the following:

93 (A) Documents and Tangible Objects. The child's counsel must disclose and permit the
94 prosecution to inspect and copy books, papers, documents, photographs and tangible objects that
95 the child intends to introduce in evidence at the hearing.

96 (B) Reports of Examinations and Tests. The child's counsel must disclose and permit the
97 prosecution to inspect and copy any results or reports of physical or mental examinations,
98 scientific tests, experiments and comparisons made in connection with the particular matter if:

- 99 (i) the item is within the child's possession, custody, or control; and
- 100 (ii) the child intends to use the item in the child's case-in-chief at the hearing or intends to
101 call the witness who prepared the report and the report relates to the witness's testimony.

102 (5) Information Not Subject to Disclosure by Child.

103 (A) Opinions, Theories or Conclusions. Unless otherwise provided by these rules, any
104 legal research, records, correspondence, reports or memoranda to the extent that they contain the
105 opinions, theories, or conclusions of the child, the child's counsel, members of counsel's staff or
106 counsel's agents participating in the representation of the child are not subject to disclosure.

107 (B) Reports. Except as provided by (4)(A) and (4)(B), reports, memoranda or internal
108 documents made by the child's counsel or members of counsel's staff, or counsel's agents in
109 connection with the defense of the matter against the child are not subject to disclosure.

110 (6) Regulation of Discovery.

111 (A) Continuing Duty to Disclose. If, after compliance with any discovery rule or order,
112 the prosecution or the child's counsel discovers additional material, information or witnesses
113 subject to disclosure, counsel must promptly notify the opposing side of the existence of the
114 additional material or information and the identity of the witnesses. The prosecution and the
115 child's counsel have a continuing duty at all times before and during the hearing to supply the

116 materials and information required by these rules.

117 (B) Time, Place and Manner of Discovery and Inspection. An order of the court
118 permitting discovery must specify the time, place and manner of making the discovery and
119 inspection permitted and may prescribe such terms and conditions as are just.

120 (C) Custody of Materials. Any materials furnished to the prosecution or the child's
121 counsel under discovery rules or court orders must remain in the custody of the prosecution or
122 the child's counsel and must be used only for the pending case and must be subject to such other
123 terms and conditions as the court may prescribe.

124 (D) Protective Orders. Upon a showing of reasonable cause, the court may at any time
125 order that specified disclosures be restricted or deferred or make such other order as is
126 appropriate. However, all materials and information to which the prosecution or the child's
127 counsel is entitled must be disclosed in time to afford the opportunity to make beneficial use of
128 it.

129 (E) Excision. If only a portion of materials are discoverable under these rules, that
130 portion must be disclosed. If material is excised pursuant to judicial order, it must be sealed and
131 preserved in the records of the court to be made available to the reviewing court in the event of
132 an appeal or habeas corpus proceeding.

133 (F) Sanctions.

134 (i) Continuance or Order. If at any time it is brought to the attention of the court that the
135 prosecution, the child or child's counsel has failed to comply with an applicable discovery rule or
136 order, the court may upon motion, order discovery or inspection, grant a continuance, or enter
137 such order as it deems just in the circumstances.

138 (ii) Contempt. Any person who willfully disobeys a court order under these discovery

139 rules may be held in contempt.

140 EXPLANATORY NOTE

141 Rule 12 was adopted effective March 1, 2010; amended effective _____.

142 Juvenile court files and records are not discoverable under this rule. Statutory procedure
143 must be followed to gain access to a juvenile court record.

144 References in this rule to “child's counsel” include the child who is self-represented.

145 Rule 12 was amended, effective _____, to update terminology and
146 statutory references consistent with the July 1, 2021, amendments to the Juvenile Court
147 Act, N.D.C.C. chs. 27-20.2, 27- 20.3, and 27-20.4.

148 SOURCES: Juvenile Policy Board Minutes of June 11, 2021; February 20, 2009;
149 December 5, 2008; August 8, 2008; May 9, 2008; February 29, 2008; September 21, 2007; April
150 20, 2007.

151 STATUTES AFFECTED:

152 CONSIDERED: N.D.C.C. § 27-21-12; ~~27-20-51~~ 27-20.2-21.

153 CROSS REFERENCE: N.D.Sup.Ct.Admin.R. 19 (Court Records Management Program).

21 petition must be held within 30 days after the filing of the petition.

22 (B) If the child is in detention, the time for the initial hearing on the petition must
23 be held within 14 days after the child has been taken into custody.

24 (C) If a child is in protective care, the petition must be filed within 30 days after
25 the child has been taken into protective care. The adjudication hearing on the petition
26 must be held within 60 days of the initial removal.

27 ~~(C)~~(D) If Except in a termination of parental rights case, if an initial hearing is
28 held, the adjudication hearing must be held within 30 days of the initial hearing. Unless a
29 continuance is granted under Rule 2(c).

30 (E) In a termination of parental rights case, the adjudication hearing must be held
31 within 150 days of the initial hearing.

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

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

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

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

42 EXPLANATORY NOTE

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

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

48 Paragraph (a)(3) was amended, effective May 1, 2015, to clarify that a petition
49 hearing is not required in a continued foster care matter under N.D.C.C. § ~~27-20-30.1~~ 27-
50 20.3-16.

51 Paragraph (a)(3) was amended, effective _____, to provide that, in a
52 juvenile guardianship matter, the court may not set a hearing until the petition has been
53 approved.

54 Paragraph (a)(3) was amended, effective _____, to move language relating
55 to children in protective care to paragraph (a)(3)(C) and to add a new paragraph (a)(3)(E)
56 specifying that, in a termination of parental rights case, the adjudication hearing must
57 occur within 150 days of the initial hearing, unless a continuance is granted.

58 Paragraph (a)(3)~~(C)~~(D) was amended, effective October 1, 2019, to clarify that, if
59 an initial hearing is held in a case not involving termination of parental rights, the
60 adjudication hearing must occur within 30 days, unless a continuance is granted.

61 Subdivision (d) was added, effective May 1, 2015, to allow hearings and other
62 proceedings involving children to be conducted using contemporaneous audio or

63 audiovisual transmission by reliable electronic means. The standards in N.D. Sup. Ct.
64 Admin. R. 52 apply when reliable electronic means are used.

65 Rule 2 was amended, effective _____, to update terminology and
66 statutory references consistent with the July 1, 2021, amendments to the Juvenile Court
67 Act, N.D.C.C. chs. 27-20.2, 27- 20.3, and 27-20.4.

68 SOURCES: Juvenile Policy Board Minutes of June 11, 2021, page _____; January
69 26, 2021, pages _____; July 31, 2019, page 1; June 21, 2019, pages 1-2; April 12, 2019,
70 pages 1-2; March 22, 2019 pages 4-5; September 5, 2014, page 2; February 20, 2009;
71 August 8, 2008; May 9, 2008; February 29, 2008; September 21, 2007; April 20, 2007.
72 Joint Procedure Committee Minutes of April 26, 2019, pages 10-12; January 29-30, 2015,
73 pages 6-7; September 25-26, 2014, pages 4-5.

74 STATUTES AFFECTED:

75 ~~SUPERSEDED: N.D.C.C. § 27-20-22.~~

76 CONSIDERED: N.D.C.C. §§ ~~27-20-14; 27-20-15; 27-20-16; 27-20-17~~ 27-20.1-
77 08; 27-20.4-06; 27-20.4-07; 27-20.4-08; 27-20.4-09; 27-20.3-16.

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