

TENNESSEE COURT RULES
RULES OF JUVENILE PROCEDURE

*** THIS DOCUMENT REFLECTS CHANGES RECEIVED THROUGH APRIL 13, 2005 ***

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I. GENERAL PROVISIONS

Rule 1. Title of Rules -- Scope -- Purpose and Construction -- Situations Not Covered by Rules.

(a) Title

These rules shall be known and cited as the Tennessee Rules of Juvenile Procedure.

(b) Scope

These rules shall govern the procedure in Juvenile Court in all cases in which children are alleged to be delinquent, unruly, dependent and neglected, or abandoned; in all cases involving the termination of parental rights; in all cases involving emergency temporary care under T.C.A. § 37-1-128; in all cases to revoke the probation of delinquent or unruly children; and in all cases to terminate home placements under T.C.A. § 37-1-137. The procedures employed in General Sessions Court under the Tennessee Rules of Criminal Procedure shall govern all cases in which children are alleged to have committed juvenile traffic offenses as defined in T.C.A. § 37-1-146 and all cases heard in juvenile court involving child abuse prosecutions under T.C.A. § 37-1-412 or § 39-15-401, nonsupport of children, or contributing to the delinquency or unruly behavior or dependency and neglect of children. The Tennessee Rules of Civil Procedure shall govern all paternity cases, guardianship and mental health commitment cases involving children, and child custody proceedings under T.C.A. § 36-6-201 et seq.; however, discovery in such cases in juvenile court shall be governed by Rule 25 of these rules. Contempt proceedings shall be conducted pursuant to the procedures applicable in courts of general jurisdiction.

(c) Purpose and Construction

These rules are designed to implement the purposes of the juvenile court law as expressed in T.C.A. § 37-1-101 by providing speedy and inexpensive procedures for the hearing of juvenile cases that assure fairness and equity and that protect the rights and interests of all parties; by promoting uniformity in practice and procedure; and by providing guidance to judges, referees, attorneys, youth services and probation officers, and others participating in the juvenile court.

(d) Situations Not Covered by Rules

Where no specific procedure is prescribed by these rules, the court may proceed in any lawful manner, in accordance with written local rules of court, which shall not be inconsistent with these rules or with any other applicable law.

Advisory Commission Comments. These rules are promulgated pursuant to statutory authority granting rule-making power to the Supreme Court. They are intended to provide a simple and practical means of operating in juvenile court in a manner which will adequately implement the law. To facilitate reference to the law, portions of the juvenile courts chapter of the Tennessee Code Annotated and other relevant law are included in an appendix to the rules.

These rules are not comprehensive. For example, they do not provide specific procedures for proceedings for the transfer between Tennessee and another state of children found to be delinquent, unruly or dependent and neglected, for disposition as provided in T.C.A. §§ 37-1-141 -- 37-1-144; nor do they deal with proceedings under the Interstate Juvenile Compact as found at T.C.A. §§ 37-4-101 -- 37-4-106; with proceedings under the Interstate Compact on the Placement of Children as found at T.C.A. §§ 37-4-201, 37-4-202; or with proceedings in which children seek to obtain judicial consent to marriage, employment, or enlistment in the armed services. (All of the above examples are listed in T.C.A. §§ 37-1-103, 37-1-104 as being under the jurisdiction of the Juvenile Court.) It is intended that these rules be applied in every instance in which they address the procedure involved. If they do not expressly or by clear implication relate to the procedure in question, then existing law is to be applied. As stated in section (d) of this rule, it is also intended that local juvenile courts adopt their own written rules, which are consistent with these rules and with relevant statutory and case law, to cover particular circumstances not presently addressed by these rules. Examples of areas which might be addressed by local rules are suggested in the comments to these rules.

There are few specific references in these rules to child abuse cases, because child abuse is generally brought to the attention of the juvenile court as a ground for finding a child dependent and neglected or for terminating parental rights. The committee suggests that where child abuse is an issue, in addition to following the procedures required in these rules pertaining to dependent and neglected and termination cases, reference be made to the law contained in the relevant code sections of the juvenile courts chapter for more particular criteria and requirements regarding such abuse cases. See T.C.A. § § 37-1-102, 37-1-129, 37-1-130, and 37-1-147. References to these code sections are generally included where pertinent in the rules. The law on criminal child abuse and on mandatory child abuse reporting (including requirements on reporting both to and by the juvenile court) is found at T.C.A. § 37-1-401 et seq. See also § 39-15-401.

Rule 2. Definitions.

In addition to the definitions of the terms set forth in *Tenn. Code Ann § 37-1-102*, the following terms when used in these rules shall, unless the context clearly otherwise requires, have the meanings shown; the singular shall include the plural, and the masculine shall include both genders unless otherwise specified.

(1) "Attorney" means a person licensed to practice law in the state of Tennessee, or a senior law student permitted to appear as an attorney pursuant to and subject to the provisions of Rule 7, Section 19 of the Rules of the Tennessee Supreme Court, and shall be construed to include the terms "legal counsel" and "lawyer."

(2) "Clerk" means the clerk who serves the juvenile court.

(3) "Community-based program" means a program providing nonresidential or residential treatment to a child in or near the community where the child's family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.

(4) "Complaint" means an informal oral or written statement requesting the court to exercise its jurisdiction.

(5) "Domicile" means the place of residence of a parent, guardian, or legal custodian.

(6) "Guardian of the person" means a person appointed by the court to exercise parental powers and duties in addition to those incident to the day to day care of a child as defined and described under "legal custodian." Every child is entitled to a guardian of the person, natural or appointive, as contemplated by Tennessee Code Annotated, title 34, chapter 2, part 1. Ordinarily a guardian of the person has the right to care, custody, and control of the child. In cases, however, where legal custody is vested in another individual or agency, those rights would be exercised by the legal custodian, and the guardian of the person would retain power to make major decisions concerning the child's welfare, such as consent to marriage, enlistment in the armed forces, and major surgery. A guardian of the person has the right and duty to represent the child in some legal actions before the court, and to reasonable visitation, subject to such limitations as the court may order, just as in the case of a parent.

(7) "Guardian ad litem" means a responsible adult who is appointed by the court to protect the rights and interests of a child during the pendency of a proceeding involving the child and to advocate for the best interests of the child.

(8) "Intake" means a process consisting of:

(i) the screening of cases in which children have been taken into custody and have been brought to a detention facility, to determine whether detention is warranted under the law; and

(ii) the screening of complaints received by the juvenile court, to determine whether the court has jurisdiction and what action if any should be taken in regard to the complaint.

(9) "Intake officer" means a person employed or otherwise designated by the juvenile court judge to perform any of the functions of intake.

(10) "Legal custodian" means a person or agency to whom legal custody of a child has been given by court order. A legal custodian has the right to physical custody of the child; the right to determine the nature of the care and treatment of the child, including ordinary medical care; and the right and duty to provide for the care, protection, training, education, and physical, mental, and moral welfare of the child. Such rights and duties are, however, subject to the conditions and limitations of the order granting legal custody and to the remaining rights and duties of the child's parent(s).

(11) "Nonjudicial days" means Saturdays, Sundays, and legal holidays. Nonjudicial days begin at 4:30 p.m. on the day preceding a weekend or holiday, and end at 8:00 a.m. on the day after a weekend or holiday.

(12) "Parent" means a natural or adoptive parent whose parental rights have not been terminated.

(13) "Petition" means a verified written statement by which the formal process of the juvenile court is begun.

(14) "Probation officer" means a person who performs the duties set forth in *Tenn. Code Ann. § 37-1-105*, particularly those of supervising and assisting children placed on probation or in the person's protective supervision or care by order of the court or other authority of law, whether such person is employed by the Department of Correction or so designated by the juvenile court.

(15) "Prosecuting attorney" means the district attorney general or city or county attorney, or any attorney requested by the court or retained by the petitioner to present the evidence in support of the petition and otherwise to conduct the proceedings on behalf of the state.

(16) "Record" means the minutes of all the proceedings of the juvenile court, including all official court documents and any papers filed in the proceedings. "Record" shall be construed to include a transcript of the proceedings where one is available.

(17) "Referee" means a person meeting the qualifications and serving the functions set forth in *Tenn. Code Ann. § 37-1-107*.

(18) "Respondent" means:

(i) In a proceeding on a petition alleging delinquent or unruly conduct, the child who is alleged to be delinquent or unruly;

(ii) In a proceeding on a petition alleging a child to be dependent and neglected, the parent, guardian, or legal custodian who allegedly neglected the child; and

(iii) In any other proceeding, the person who is summoned to appear before the court as a party, with the right to respond to the allegations of the petition.

(19) "Violation of probation" means the failure to comply with the terms of probation established by the court.

(20) "Violation of the terms of home placement" means the failure to comply with the terms of home placement or other aftercare established when a child who has been committed to the custody of the Department of Correction pursuant to *Tenn. Code Ann. § 37-1-137* is placed in the home of a parent or guardian under the continuing supervision of the Department of Correction or in a foster home contracted for by the Department of Correction where such home has three or less foster children in residence.

(21) "Youth services officer" means a person fulfilling the functions stated in *Tenn. Code Ann. § 37-1-106*.

Advisory Commission Comments. Regarding the terms "youth services officer," "intake officer," and "probation officer," there has been confusion concerning the overlapping functions of these three positions. The committee has attempted, within the parameters of the law, to clarify the functions in the above definitions. However, it recognizes that in many cases one person will fulfill multiple functions, whatever his title. While this may be unavoidable in some situations, the committee intends that there be limitations on such multiple functioning where it creates a legal conflict of interest. For example, the committee considers that it would not be proper for any employee of the court to make an investigation, interrogate witnesses, take statements or otherwise prepare a case for the purpose of prosecuting a petition before his own court. This does not preclude preliminary investigations for the purpose of intake screening or preparing predisposition reports and social histories as provided in these rules, nor does it preclude testifying before the court on such predisposition reports and social histories. Further, this does not mean that a probation officer should not initiate proceedings to revoke the probation of a child in the officer's charge.

While subsection (18)(ii) of Rule 2 does not require it, the committee suggests that in dependent and neglected cases where there is only one custodial parent, the absent parent be notified wherever practicable.

Rule 3. Venue.

Venue shall be as provided in T.C.A. § 37-1-111 and in Rule 18 of the Tennessee Rules of Criminal Procedure.

Rule 4. Referees.

(a) Hearings Before Referees

The judge may direct that any case or class of cases of which the juvenile court has jurisdiction shall be heard in the first instance by the referee. Such cases shall be conducted in the same manner provided for the hearing of cases by the court except as otherwise specified herein. The referee in the conduct of the proceedings shall have the powers of a trial judge, and shall have the same authority as the judge to issue any and all process. Upon the conclusion of the hearing in each case, the referee shall transmit to the judge all papers relating to the case, together with the referee's written findings and recommendations.

(b) Review of Referee's Actions

Any hearing by a referee on any preliminary matter shall be final and not reviewable by the judge of the juvenile court, except on the court's own motion. The setting of bond in detention hearings and any matter that is a final adjudication of a child shall not be construed to be preliminary matters under this section and are reviewable by the judge of the juvenile court upon request or upon the court's own motion, except as provided in section (c)(1) below.

(c) Request for Rehearing Before Judge

(1) Any party may, within five judicial days of the transmittal to the judge of the written findings and recommendations of the referee, file a request with the court for a hearing by the judge of the juvenile court. The judge may, on his or her own motion, order a rehearing of any matter heard before a referee, and shall allow a hearing if a request for such hearing is filed as herein prescribed. However, there shall be no rehearing in any delinquent or unruly case in which the petition is dismissed by the referee after a hearing on the merits.

(2) Each party shall be informed at the hearing before the referee of the right to a rehearing before the juvenile court judge, of the time limits within which a request for a rehearing must be perfected, and of the manner in which to perfect such request.

(3) Unless the judge orders otherwise, the recommendations of the referee shall be the decree of the court pending a rehearing.

(d) Confirmation of Referee's Findings and Recommendations

In case no hearing before the judge is requested, or when the right to a hearing is waived, the findings and recommendations of the referee become the decree of the court when confirmed by an order of the judge. The final order of the court shall, in any event, be proof of such confirmation, and also of the fact that the matter was duly referred to the referee.

Advisory Commission Comments. This rule is adapted from those provisions of *Tenn. Code Ann. § 37-1-107* which are procedural in nature.

It should be noted that a waiver of the right to a rehearing before the judge (either by express waiver or by failure to request rehearing within five days of the hearing before the referee) does not constitute a waiver of the right to appeal to circuit court under *Tenn. Code Ann. § 37-1-159*. Indeed, in certain cases it may be advisable to waive rehearing before the juvenile court judge and proceed directly to appeal de novo to circuit court. See *State v. York, 615 S.W.2d 154 (Tenn. 1981)*. Once the juvenile court judge confirms the referee's findings and recommendations, such findings and recommendations become the order of the juvenile court, from which the appeal to the circuit court is taken. It is at the point of confirmation by the juvenile court judge that the time for such appeal begins to run.

Regarding the last sentence in section (c)(1) of the rule, the constitutional prohibition against being placed twice in jeopardy for the same offense applies to juvenile court proceedings as well as adult proceedings. *Breed v. Jones, 421 U.S. 519 (1975)*; *State v. Jackson, 503 S.W.2d 185 (Tenn. 1973)*. Jeopardy in delinquent and unruly proceedings attaches with the swearing in of the first witness in an adjudicatory hearing, whether that hearing is before the judge or the referee. While the child whose case has been heard by a referee has a right to a rehearing before the juvenile court judge and a right to a de novo appeal of the order of the juvenile court judge to the circuit court, the state has no such

right to a rehearing or de novo appeal. *State v. Jackson, supra*. Therefore a dismissal of the petition following a full adjudicatory hearing before the referee must be confirmed by the juvenile court judge and is not subject to a rehearing or de novo appeal.

The state may appeal an order or judgment entered by the referee, the substantive effect of which results in the dismissal of a petition without a full hearing on the merits. The state may also appeal an order granting or refusing to revoke probation. For further insight on this issue, see Rule 3 of the Tennessee Rules of Appellate Procedure.

II. PREHEARING PROCEDURES

Rule 5. Custody -- When Child May Be Taken into Custody -- Procedures upon Taking Child into Custody -- Rights of the Child.

(a) Grounds for Taking Child into Custody

A child may be taken into custody according to the provisions of *Tenn. Code Ann. § 37-1-113*.

(b) Grounds for Detention or Shelter Care

When a child is taken into custody the child shall not be detained but shall be released to the child's custodian or some other suitable adult within a reasonable time,

(1) Unless the court has lawfully ordered the child to be detained pursuant to procedures set forth in these rules; or

(2) Unless detention or shelter care is sought pursuant to the grounds set forth in *Tenn. Code Ann. § 37-1-114*.

The person to whom a child is released may be required to sign a written promise to produce the child when ordered by the court.

(c) Detention of Delinquent and Unruly Children

(1) Admission of Delinquent or Unruly Child to Detention Facility If a child alleged to be delinquent or unruly is not released, the child shall within a reasonable time be taken to the juvenile court or to a detention facility designated by court order in accordance with *Tenn. Code Ann. § 37-1-116*, where as a condition to the child's admission thereto, the person presenting the child shall complete a written complaint, which shall include the reason(s) the child was taken into custody, the reason(s) the detention or shelter care is requested, the nature of the conduct charged, and the efforts made to notify an appropriate adult custodian. This complaint shall be delivered with the child to the supervisor of the detention facility.

(2) Notification of Court of Presence of Child at Detention Facility When a child has been delivered to a detention facility, the supervisor of the detention facility shall immediately notify the court or its designated representative of the presence of the child at the facility and shall as soon thereafter as possible provide to the court or its representative a copy of the complaint regarding the child.

(3) Requirements for Detention in Jails. -- If the detention facility designated by the court is also a facility for the detention of adults, no detention of a child shall take place unless the court so orders in accordance with *Tenn. Code Ann. § 37-1-116*, after determining that public safety and protection reasonably require detention of the child. Any such detention of a child shall be in a room separate and removed from those for adults.

(4) Release to Adult Custodian. -- If the only reason for the holding of a child is the unavailability of a parent, guardian, legal custodian, or suitable adult relative and if, prior to any detention or shelter care hearing, a parent, guardian, legal custodian, or suitable adult relative requests the release of the child and undertakes to assume responsibility for any court appearance which may thereafter be required of the child, the detention or shelter care facility shall forthwith release the child into the custody of such adult.

(5) Notification to Child. -- When a child is brought to the court or placed in detention, a youth services officer or other person designated by the juvenile court judge to serve as an intake officer for the juvenile court shall within a reasonable time inform the child of:

(i) The reason for the detention;

(ii) The right to a detention hearing as provided under these rules and an explanation that a decision will be made at the detention hearing whether the child will remain in detention or be released pending any future court appearance;

(iii) The right to an attorney;

(iv) That if the child is unable to hire an attorney and if the child's parents, guardian or legal custodian have not provided or do not provide an attorney, one can be provided at no charge to the child;

(v) That the child is not required to say anything and that anything the child says may be used against the child;

(vi) If the child's attorney, parent, guardian, or legal custodian is not present, that the child has a right to communicate with them, and that, if necessary, reasonable means will be provided to do so; and

(vii) The child's rights during detention as set forth in Rule 7.

(6) Notification to Parents. -- When a child is detained, the child's parents, guardian, or legal custodian shall be notified of the detention as soon as possible. They shall also be informed of the child's rights as set forth in section (c)(5) above.

(7) Preliminary Investigation; Release. -- The person designated by the court shall make a preliminary investigation as required by *Tenn. Code Ann. § 37-1-117*. If after the preliminary investigation no reason appears to warrant detention under *Tenn. Code Ann. § 37-1-114*, the child shall be released to the person having lawful custody or to a responsible person, organization, or agency approved by the court. Before such release, the person to whom the child is released may be required to promise in writing to produce the child before the court at a time specified by the court.

(8) Filing of Petition When Child Detained. -- If a child alleged to be delinquent or unruly is not released according to the provisions of this rule, a petition shall be promptly filed with the court.

(d) Procedures in Dependent and Neglected and Abuse Cases

(1) Grounds for Emergency Removal by Court Order The juvenile court may, without formal hearing, order that a child be removed from the custody of the child's parent, guardian, or legal custodian, pending further investigation and hearing, when the court finds that there is probable cause to believe that the conditions specified in *Tenn. Code Ann. § 37-1-114* exist and that the child is in need of the immediate protection of the court. However, any such findings and order shall be based upon a sworn petition or sworn testimony containing specific factual allegations.

(2) Grounds for Emergency Removal Without Court Order Pursuant to *Tenn. Code Ann. § 37-1-113*, a law enforcement officer, a social worker of the Department of Human Services, or a duly authorized officer of the court may take a child into custody without a court order, if that person has reasonable grounds to believe that the conditions specified in *Tenn. Code Ann. § 37-1-114* exist.

(3) Procedures upon Taking Child into Custody; Notice Requirements When a child is taken into custody upon an allegation that the child is dependent and neglected or abused, the person taking the child into custody shall bring the child before the court or deliver the child to a shelter care facility designated by the court or to a medical facility if the child is believed to suffer from a serious physical condition or illness which requires prompt treatment. The person shall give notice thereof, together with a reason for taking the child into custody, to the parents, guardian, or other custodian and to the court. Notice shall also immediately be given to the Department of Human Services.

As soon as practicable, notice shall also be given to the parents, guardian, or other custodian, and to the child if fourteen (14) years of age or older or if also alleged to be delinquent or unruly, of their right to a preliminary hearing as provided in *Tenn. Code Ann. § 37-1-117* and Rule 16 of these rules; of the time, date, and place of the hearing; and of the factual circumstances necessitating the removal.

(4) Filing of Petition When Child in Custody. -- If the child is taken into custody prior to the filing of a petition, a petition shall be filed as soon as practicable but in no event later than two (2) days after the child is taken into custody excluding nonjudicial days.

(5) Alternatives to Ordering Emergency Removal In cases in which application is made for an order of emergency removal, the court may, as an alternative to emergency removal, authorize a representative of the Department of Human Services to remain in the child's home with the child until a parent, guardian, legal custodian, or adult relative of the child enters the home and expresses a willingness and apparent ability to resume permanent charge of the child, or in the

case of a relative, to assume charge of the child until a parent or legal guardian enters the home and expresses such willingness and apparent ability.

As soon as practicable, notice shall also be given to the parents, guardian, or other custodian, and to the child if fourteen (14) years of age or older or if also alleged to be delinquent or unruly, of their right to a preliminary hearing as provided in *Tenn. Code Ann. § 37-1-117* and Rule 16 of these rules; of the time, date, and place of the hearing; and of the factual circumstances necessitating the removal.

(4) Filing of Petition When Child in Custody. -- If the child is taken into custody prior to the filing of a petition, a petition shall be filed as soon as practicable but not later than the time required by the Notice Requirements.

Advisory Commission Comments. It is suggested by the committee that each local juvenile court develop its own written guidelines and criteria for the detention and shelter care of children in accordance with the law and with these rules. The intake officer should properly consider such guidelines and criteria in making the investigations required in section (c)(7) of this rule, and in making decisions whether to detain particular children. The intake officer may be a youth services officer or other employee of the court, or someone else designated by the court to serve as an intake officer for detention screening; for example, an employee of the sheriff's office may act as intake officer when no court employee is available. The committee urges that youth services officers perform these functions, but realizes that in some counties this will be difficult to achieve on a consistent basis.

In regard to the preliminary investigation required by section (c)(7) of the rule, the following procedures are suggested as a proper basis for such investigations, to be supplemented by other procedures within the law which may be appropriate to particular cases. The intake officer may:

1. Interview or otherwise seek information from the complainant, victim and any witnesses to the alleged offense;
2. Examine court records and the records of law enforcement agencies; and
3. Conduct interviews with the subject of the complaint and that child's family, guardian, or legal custodian. These interviews must be voluntary, and the child (or parent, guardian, or custodian in dependent and neglected cases) has the right to an attorney and to remain silent. At the beginning of such interviews the intake officer should explain the nature of the complaint and the purpose, procedures, and possible consequences of the detention screening process.

The term "shelter care facility" in section (d) of this rule should be construed to include a foster home or other home or facility approved by the court, as stated in *Tenn. Code Ann. § 37-1-116*. Both in regard to the detaining of allegedly dependent and neglected children in "shelter care facilities" (*Tenn. Code Ann. § 37-1-116*) prohibits the detention of such children in any facility "intended or used for the detention of adults charged with criminal offenses or of children alleged to be delinquent" and in regard to the detaining of allegedly delinquent and unruly children in "detention facilities," the committee recommends that, wherever possible, community-based alternatives to institutions should be used. This preference is in keeping with the prohibition in *Tenn. Code Ann. § 37-1-114* against any detention or shelter care of children unless "there is no less drastic alternative to removal of the child from the custody of his parent, guardian or legal custodian available which would reasonably and adequately protect the child's health or safety or prevent the child's removal from the jurisdiction of the court pending a hearing."

Rule 6. Time Limits for Detention and Temporary Custody Preliminary Hearings.

(a) Delinquent Cases

In the case of a child alleged to be delinquent, a detention hearing shall be held no later than three (3) days excluding nonjudicial days but no longer than eighty-four (84) hours after the child is placed in detention to determine whether his or her detention is required.

(b) Unruly Cases

Children alleged to be unruly shall not be detained for more than twenty-four (24) hours excluding nonjudicial days unless there has been a detention hearing and a judicial determination that there is probable cause to believe the child has violated a valid court order, and in no event shall such a child be detained for more than three (3) days excluding nonjudicial days but no longer than eighty-four (84) hours after the child is placed in detention prior to an adjudicatory

hearing. Nothing herein shall prohibit the court from ordering the placement of children in shelter care where appropriate, and such placement shall not be considered detention within the meaning of this section.

(c) Dependent and Neglected Cases

If a child alleged to be dependent and neglected is removed from the custody of the child's parent, guardian or legal custodian prior to a hearing on the petition, a preliminary hearing shall be held no later than three (3) days excluding nonjudicial days but no longer than eighty-four (84) hours after the child's removal, to determine whether the removal is required under *Tenn. Code Ann. § 37-1-114*. If the court determines that the child's removal is required under *Tenn. Code Ann. § 37-1-114*, the court may order that the child be placed in the custody of a suitable person, persons or agency, as specified in *Tenn. Code Ann. § 37-1-116*. The provisions of this subparagraph may be waived by express and knowing waiver by the parties to an action including the parents, guardian or legal custodian and the child or guardian ad litem for the child if the child is of tender years. Any such waiver may be revoked at any time, at which time the provisions of this section shall apply. The court shall make every effort to advise the parent, guardian, or legal custodian, and the child, if fourteen (14) years of age or older or alleged to be delinquent or unruly, of the time, date, and place of the hearing and the factual circumstances necessitating the removal.

Advisory Commission Comments. Rule 6 is taken from T.C.A. § § 37-214(b) [see § 37-1-114] and 37-217 [now § 37-1-117]. Because legislation to amend T.C.A. § 37-217(b)(1) was under consideration at the time of the rules' introduction, the portion of that section which states that "if a juvenile is detained as provided in § 37-214, between the hours of twelve o'clock a.m. (12:00) and nine o'clock a.m. (9:00) on a Friday, a detention hearing shall be held no later than eighty-four (84) hours after the child is placed in detention pursuant to § 37-214" was omitted from section (a) of Rule 6. Reference should be made to T.C.A. § 37-217 [now § 37-1-117] for the current law on the issue of time limits for detention hearings in delinquent cases.

The reference in subsection (b) of the rule to "valid court orders" is taken from Tenn. Code Ann. § 37-214(b) as amended by Public Chapter 882, enacted in 1982 specifically to put Tennessee in compliance with the federal Juvenile Justice and Delinquency Prevention (JJDP) Act, found at 42 *U.S.C.A. 5601 -- 5751*. (Chapter 882, often referred to as Tennessee's "deinstitutionalization legislation," also amended Tenn. Code Ann. § § 37-217(b) and (c) [see § 37-1-117], and 37-232 [now § 37-1-132].) The Office of Juvenile Justice and Delinquency Prevention in August of 1982 issued final regulations to implement that portion of the Act which deals with the detention and institutionalization of status offenders (unruly children). These regulations, which are found at 28 *C.F.R. § 31.303(i)(3)*, set forth the legal requirements for the issuing of "valid court orders," the violation of which by unruly children may, in certain circumstances, authorize juvenile courts to detain and/or commit such children to the Department of Correction. See the appendix to these rules for the text of the regulations.

Rule 7. Rights During Detention.

(a) Visitation, Telephone Calls, Mail

When a child is confined to a detention facility, unless the court specifically directs otherwise due to involvement in the case or other appropriate reason, parents, guardian, or custodians shall be allowed daily visitation unless provided otherwise by local rule. Attorneys may visit children whom they represent, and members of the clergy may visit at the request of children or their parents or guardians. A child shall have such access to a telephone and the mails as the court may prescribe considering the circumstances of the case.

(b) Visiting Hours

The court may regulate visiting hours, or the person in charge of the detention facility may prescribe visiting hours and conditions with the approval of the court.

(c) Punishment

Neither detention attendants nor any other person shall administer corporal punishment to a child in detention.

(d) Interrogation

Intimidative or coercive methods shall never be used in questioning children. If feasible, a parent or guardian should be present during questioning. In any event, no child having been placed in and present in a detention facility shall be interrogated concerning an alleged violation of law unless the child intelligently waives in writing the right to remain silent.

(e) Interviews

Unauthorized persons shall not be allowed to interview a child in detention and designated court personnel may interview such children only concerning social data.

Advisory Commission Comments. Rule 7 refers only to secure detention facilities, not to nonsecure shelter care and other facilities; however, similar rules would not necessarily be inappropriate for such facilities.

Rule 8. Initiation of Cases.

(a) Complaint

Any person or agency having knowledge of the facts may file a complaint with the juvenile court or an officer designated by the court alleging facts to indicate that a child is delinquent, unruly, or dependent and neglected. The court representative accepting the complaint shall note thereon the date and time of filing.

(b) Juvenile Summons

In delinquent and unruly matters, the complaint may be in the form of a juvenile summons issued by a law enforcement officer or other person authorized by the court. Such summons shall be on a form prescribed or approved by the court.

(c) Preliminary Inquiry

Upon receipt of a complaint, a designated intake court officer shall conduct a preliminary inquiry to determine whether the facts alleged establish that the matter is within the jurisdiction of the court and whether the best interests of the child or of the public require that further court action be taken. However, all complaints alleging that a child is dependent and neglected or abused shall be referred to the Department of Human Services.

(d) Options at Intake

If the preliminary inquiry indicates that there are facts sufficient to establish the jurisdiction of the court over the child and that court action is appropriate under Rule 12, the designated court officer shall make informal adjustment or accept the filing of a petition, as the facts and circumstances require.

(e) Procedure upon Filing Petition

Upon the filing of a petition, the case shall be set for hearing in accordance with local rules and procedures for the setting of cases. A copy of the petition in all cases alleging a delinquent offense which would be a felony if committed by an adult may be sent to the District Attorney General.

(f) Traffic Offenses

In cases of alleged traffic violations by children, the issuance of a traffic ticket or citation shall be sufficient to invoke the jurisdiction of the court.

Advisory Commission Comments. It is the responsibility of the person making a complaint to the juvenile court to furnish the designated court intake officer with information sufficient to establish the court's jurisdiction over the matter and to support the charges against the child. In addition, the designated court officer is required by this rule to conduct an investigation, or "preliminary inquiry," in order to obtain information necessary for making intake decisions. In the course of this investigation, the designated court officer should proceed substantially as provided in the comment to Rule 5, regarding detention screening investigations. At the beginning of the interview with the child and the child's

family, guardian, or legal custodian, the designated court officer should explain the nature of the complaint; the purpose, procedures, and possible outcomes of the intake process; and that the child has the right to remain silent, to have an attorney, and to have an attorney appointed for the child if the child cannot afford to hire one.

In making decisions whether to dismiss, informally adjust, or file petitions in delinquent cases, it is desirable that, wherever practicable, the designated court officer consult with the district attorney general on questions concerning jurisdiction and legal sufficiency of evidence. While the committee recognizes that in many areas of the state, time constraints will not allow the district attorney to become intimately involved in the intake process, it encourages such involvement in regard to these legal questions, for the purpose of assuring that complaints which are not legally sufficient are screened out of the intake or court process at the outset. Such involvement represents the trend in juvenile court intake across the nation. At a minimum, the district attorney may want to be involved to the extent of electing to prosecute very serious cases for the state or to initiate transfer proceedings in such cases, and may choose for this purpose to arrange to be sent copies of all petitions filed in cases involving offenses which would be felonies if committed by adults.

The committee recommends that juvenile courts develop local rules and guidelines regarding which types of cases should be informally adjusted, in which one's petitions should be filed whether or not informal adjustment subsequently occurs, and in which one's notification should be given to the district attorney general whether or not a petition is filed. Such rules and guidelines should serve to foster productive communication and coordination between the juvenile court and the office of the district attorney general, and should also promote consistency and fairness in the intake decision-making process. Any such rules or guidelines should be formulated with a view towards implementing the purposes of these rules as stated throughout, and as stated specifically, regarding intake, at subsections (a)(1) -- (4) of Rule 12.

Rule 9. Petitions.

The petition shall be verified and may be on information and belief. It shall set forth in plain and concise language with particularity the factual and other allegations relied upon in asserting that the respondent is within the juvenile court's jurisdiction, including:

- (1) The name, residence address, and date of birth of the child if known;
- (2) The names and residence addresses, if known to the petitioner, of the parents, guardian or custodian of the child and of the child's spouse, if any;
- (3) The approximate date, manner and place of the acts alleged as the basis of the court's jurisdiction;
- (4) Whether the petition alleges delinquent, unruly, dependent and neglected, or other category of jurisdiction;
- (5) A statement that it is in the best interest of the child and the public that the proceeding be brought and, if delinquent or unruly conduct is alleged, that the child is in need of treatment or rehabilitation; and
- (6) A statement whether the child is in custody and if so, the place of detention and the time the child was taken into custody.

Rule 10. Summons.

(a) General Provisions

After the petition has been filed the court shall fix a time for a hearing thereon. The court shall direct the issuance of summons to the parents, guardian or other custodian, a guardian ad litem, and any other persons as appear to the court to be proper or necessary parties to the proceeding, requiring them to appear before the court at the time fixed to answer the allegations of the petition. The summons shall also be directed to the child if the child is fourteen (14) or more years of age or is alleged to be a delinquent or unruly child. A copy of the petition shall accompany the summons unless the summons is served by publication in which case the published summons shall indicate the general nature of the allegations and where a copy of the petition can be obtained.

(b) Order to Appear and Bring Child to Hearing

The court may indorse upon the summons an order directing the parents, guardian or other custodian of the child to appear personally at the hearing and directing the person having the physical custody or control of the child to bring the child to the hearing.

(c) Service of Summons

(1) If a party to be served with a summons is within this state and can be found, the summons shall be served upon the party personally at least three (3) days before the hearing. 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 mailing a copy by registered or certified mail at least five (5) days before the hearing. If the party is without this state but can be found or the party's address ascertained, service of the summons may be made either by delivering a copy to the party personally or by mailing a copy to the party by registered or certified mail at least five (5) days before the hearing.

(2) 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 in accordance with *Tenn. Code Ann. § 21-1-203* and 21-1-204(a) and (b). The hearing shall not be earlier than five (5) days after the date of the last publication.

(3) Service of the summons may be made by any suitable person under the direction of the court.

(4) The court may authorize the payment of the costs of service and of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing, as provided by law.

(d) Waiver of Service

A party other than a child may waive service of summons by written stipulation or voluntary appearance. A child may waive service of summons in accordance with Rule 30(d) of these rules.

Advisory Commission Comments. Rule 10 is taken from *Tenn. Code Ann. §§ 37-1-121, 37-1-123, and 37-1-150.*

Rule 11. Orders for the Attachment of Children.

Orders for the attachment of children shall only issue for extraordinary matters and under the following circumstances:

(a) Failure to Appear

When a child fails to appear at a hearing or conference to which the child has been properly summoned or personally notified to appear, the referee or judge may issue an order of attachment; or

(b) Requirements for Issuance of Orders in Other Cases

Where an order of attachment is sought to be issued in any other case, the following requirements must be met:

(1) The judge or referee must determine, from the juvenile court petition and the affidavit and/or sworn testimony presented, that there is probable cause to believe that an offense has been committed and that the child committed it or, in the case of a child alleged to be dependent and neglected, that the child is in need of the immediate protection of the court. In making this probable cause determination, the judge or referee shall be governed by the following:

(i) The statement of a person requesting an order of attachment must be reduced to writing and made upon oath;

(ii) The written affidavit must provide sufficient factual information to support an independent judgment that probable cause exists for the issuance of the order of attachment; and

(iii) If hearsay evidence is relied upon, the basis for the credibility of both the informant and the informant's information must also appear in the affidavit.

(2) Pursuant to *Tenn. Code Ann. § 37-1-121*, the judge or referee must also find that:

(i) The conduct, condition or surroundings of the child are endangering the child's health or welfare or that of others; or

(ii) The child may abscond or be removed from the jurisdiction of the court; or

(iii) Service of a summons would be ineffectual or the parties are evading service.

(3) If the judge or referee determines that both requirements (1) and (2) above have been satisfied, then he or she may order that the child be taken into custody immediately and brought before the court in accordance with Rule 5.

Advisory Commission Comments. The same restrictions that apply to issuance of an arrest order in adult proceedings generally apply to the issuance of attachments in juvenile court proceedings. See *Tenn. Code Ann. § 37-1-113*. Ordinarily, proceedings in juvenile court will be initiated and conducted pursuant to the issuance of a petition and summons rather than the issuance of attachment. Attachments should be used only when necessary to further the goals and purposes of the Juvenile Court Act.

As only attachments of children are addressed in this rule, reference to *Tenn. Code Ann. § 37-1-122*, regarding attachments of parents, guardians, and other persons having custody of children under juvenile court jurisdiction, was omitted from the rule. That code section should be consulted for guidance in regard to such action.

Rule 12. Intake in Delinquent and Unruly Cases.

(a) Purposes

The juvenile court intake program shall be designed to do all of the following:

(1) To provide for resolution of complaints and petitions at intake by excluding or diverting from the juvenile process at its inception:

(i) Those matters over which the juvenile court has no jurisdiction;

(ii) Those matters in which there appears to be insufficient evidence to support the petition; and

(iii) Those matters in which sufficient evidence may exist to bring a child within the jurisdiction of the juvenile court but which are not serious enough to require official action under the juvenile court law or which may be suitable referred to a nonjudicial agency available in the community;

(2) To provide for a program of informal supervision of the child in those cases where the child is within the jurisdiction of the juvenile court and official intervention short of formal adjudication seems desirable;

(3) To provide for the screening of cases for detention as provided in Rule 5; and

(4) To provide for the commencement of proceedings in the juvenile court by the filing of a petition only when necessary for the welfare of the child or the safety and protection of the public.

(b) Informal Adjustment

If there is sufficient evidence to bring the child within the jurisdiction of the court, and following advisement of rights to the child and the child's parent, guardian, or legal custodian, including the right to an attorney at this and all other stages of the proceeding, upon recommendation of the designated court officer the matter may be held open and the designated court officer may attempt, with the consent of the child and the child's parent, guardian, or legal custodian, to make satisfactory informal adjustment as provided in Rule 14.

(c) Intake Duties

In addition to the duties otherwise provided by law, the designated court officer at the initial interview shall have the following duties in delinquent cases and cases in which an unruly child is alleged to have violated a valid court order:

(1) The officer shall immediately advise the child of the following rights:

(i) That the child has a right to an attorney;

(ii) That if the child is unable to hire an attorney and if the child's parent, guardian or legal custodian has not provided an attorney, one can be provided at no charge to the child;

(iii) That the child is not required to say anything and that anything the child says may be used against him or her; and

(iv) If the child's parent, guardian, legal custodian or attorney is not present, that the child has a right to communicate with them and that, if necessary, reasonable means will be provided to do so.

(2) Unless the child waives the right to an attorney as hereinafter provided, when the child advises the designated court officer that the child cannot afford an attorney and the child's parent, guardian or legal custodian refuses to provide an attorney, the designated court officer shall request that an attorney be promptly appointed by the court.

(3) If the child indicates that he or she has or is able to retain an attorney, or if the parents or guardians indicate that they will provide an attorney, the designated court officer shall note the name of the attorney, if known, in the record of the child.

Advisory Commission Comments. There is obviously room for local discretion in regard to the specific duties and functions, within the boundaries of the law and these rules, of youth services officers and other designated court intake officers. See, however, the comments to Rules 2, 5, 8, 19, and 21 on this issue. Depending upon the number of youth services officers or other persons available in a county to perform the intake function, it may be advisable to develop local rules to govern the scope of the duties and functions of youth services officers in general, and of persons designated to act as intake officers in particular.

See Rule 30(i) regarding the assessment of the cost of attorney's fees against parents who are not indigent.

Rule 13. Intake in Dependent and Neglected and Abuse Cases.

(a) Referral to Department of Human Services

When a complaint or petition is filed in the juvenile court alleging a child to be dependent and neglected and/or abused, the court shall promptly refer the case to the Department of Human Services to investigate the social conditions of the child and to report the findings to the court to aid the court in its disposition of the child.

(b) Referral to Licensed Child-Placing Agency

If the child who is the subject of the complaint or petition is in the custody of a licensed child-placing agency, or if the complaint or petition is filed by a licensed child-placing agency, the referral may be made to such agency in addition to the Department of Human Services.

(c) Informal Adjustment

The designated court officer may make informal adjustment in cases alleging dependency and neglect as is provided by *Tenn. Code Ann. § 37-1-110*, upon court approval. Such informal adjustment shall be made under comparable conditions and procedures as are set forth in Rule 14.

Advisory Commission Comments. Because of the intimate involvement in, and primary responsibility for, the types of cases covered by this rule on the part of the Department of Human Services, the committee deemed it inappropriate to draft a more specific rule on this subject. Regarding the informal adjustment of these cases, it should be noted that no such action should be undertaken without consultation with the Department of Human Services. See, in this regard, subsection (a)(4) of Rule 14, which suggests that the attitude of any affected agencies be taken into account in deciding whether to informally adjust any case.

Rule 14. Informal Adjustment in Delinquent and Unruly Cases.

(a) Criteria for Informal Adjustment

Subject to court approval, on a case-by-case basis, and in accordance with local rules, if after investigation in a delinquent or unruly case, the designated court officer concludes that a child is within the jurisdiction of the juvenile court, the officer may undertake to remedy the situation by giving counsel and advice to the parties with a view to an informal adjustment of the case. Such counsel shall not continue for more than three months unless extended by the court pursuant to *Tenn. Code Ann. § 37-1-110*. In determining whether informal adjustment should be undertaken, the designated court officer may consider:

(1) Whether the child has had a problem in the home, school or community which indicates that some supervision would be desirable;

(2) Whether the child and the parent, guardian or legal custodian seem able to resolve the matter with the assistance of the designated court officer or other court staff, and without formal juvenile court action;

(3) Whether further observation or evaluation by the designated court officer is needed before a decision can be reached;

(4) The attitude of the child, the parent, guardian, or legal custodian, and/or any other affected persons or agencies;

(5) The age, maturity and mental condition of the child;

(6) The prior history or record, if any, of the child;

(7) The recommendation, if any, of the referring party or agency;

(8) Any other circumstances which indicate that informal adjustment would be consistent with the welfare and safety of the child and the protection of the public.

(b) Notice to Parties

(1) When the designated court officer determines that informal adjustment is appropriate, the officer shall notify the child and the child's parent, guardian or legal custodian, by letter, telephone or otherwise, to attend a conference at a designated date, time, and place.

(2) At the time the notice to attend the conference is made, the child and his or her parent, guardian or legal custodian shall be informed that they may be represented by an attorney at the conference.

(c) Informal Adjustment Conference

(1) If the child and the child's parent, guardian or legal custodian appear at the informal adjustment conference without an attorney, the designated court officer shall at the commencement of the conference inform them of their right to an attorney and the right of the child to decline to discuss the allegations of the petition or complaint. After being so informed, if either the child or the child's parent, guardian or legal custodian indicates a desire to be represented by an attorney, the designated court officer shall adjourn the conference to afford them an opportunity to hire an attorney, or shall provide a court-appointed attorney for any child who is unable to afford an attorney or whose parents refuse to hire an attorney against the wishes of the child.

(2) The designated court officer shall inform the child and the child's custodian:

(i) That information has been received concerning the child which appears to establish the jurisdiction of the juvenile court to act under the Juvenile Code;

(ii) That the officer intends to discuss with them: (A) recommendations for action or conduct in the interests of the child to correct the conditions of behavior or environment which may exist; (B) continuing conferences and contacts with the child and the child's parent, guardian or legal custodian by the designated court officer or other authorized persons; and (C) the child's general behavior, the home and school environment, and other factors bearing upon the proposed informal adjustment;

(iii) That during the informal adjustment process no further formal proceedings will occur on the present allegation(s);

(iv) That the informal adjustment process is voluntary with the child and the child's parent, guardian or legal custodian, and that they may withdraw from informal adjustment at any time;

(v) That for purposes of the informal adjustment, the jurisdiction of the court and the allegations of fact in the complaint or petition are and will be assumed to be true, but that the designated court officer will not make a finding of fact, nor will any information obtained or divulged or the fact of an attempted informal adjustment be used as evidence

in the event of a court hearing, nor does the agreement to an informal adjustment necessarily constitute an admission of the alleged facts;

(vi) That if the child or the child's parent, guardian or legal custodian denies that the juvenile court has jurisdiction to act under the Juvenile Code, or wishes the facts to be determined by the court at a hearing, no further effort will be made to arrive at informal adjustment and the case will be set for a hearing;

(vii) That the designated court officer may terminate the effort at informal adjustment at any time and thereupon may request dismissal of the case without further proceedings;

(viii) That the designated court officer may file a petition or proceed on a previously filed petition in the juvenile court if the child has not followed the conditions and requirements recommended at the informal adjustment conference or has withdrawn therefrom; and

(ix) That if the child successfully completes the informal adjustment program recommended by the designated court officer, no petition will be filed on the charges which are the subject matter of the complaint forming the basis for the informal adjustment or, if a petition has been filed, the matter shall be dismissed with prejudice.

(3) Following the initial conference, subsequent conferences may be scheduled by the designated court officer during the informal adjustment process.

(d) Termination of Informal Adjustment

(1) The designated court officer may terminate the informal adjustment process and request dismissal of the case without further proceedings if the child successfully completes the recommended informal adjustment program or if other sufficient reasons exist for dismissal.

(2) The designated court officer may terminate the informal adjustment and file a petition in the juvenile court if at any time the child or the child's parent, guardian or legal custodian:

- (i) Declines to participate further in the informal adjustment process;
- (ii) Denies the jurisdiction of the court to act under the Juvenile Code;
- (iii) Expresses a desire that the facts be determined by the court;
- (iv) Fails without reasonable excuse to attend scheduled conferences; or
- (v) Fails to comply with the terms of the informal adjustment program.

(3) The informal adjustment process shall not continue beyond a period of three months from its commencement unless extended by the court for an additional period not to exceed six months by an order entered prior to the expiration of the original three-month period.

(4) Upon termination of the informal adjustment process, the designated court officer shall notify the child and the child's parent, guardian or legal custodian thereof and report such action to the court. Such notification shall include the basis for the termination.

(5) When a matter is informally adjusted, such disposition precludes any confinement of the child on that matter during the period of the informal adjustment.

Advisory Commission Comments. The intent of Rule 14 is to allow local courts flexibility in how they handle informal adjustment, but also to spell out those basic procedures which must take place in every case in which informal adjustment is undertaken to assure that informal adjustment is voluntary, as required in *Tenn. Code Ann. § 37-1-110*. Over and above these mandated procedures, local courts may adopt local rules and procedures which may address such issues as whether informal adjustment is to be handled on a case by case basis and what programs may be used in the informal adjustment of cases. It should further be noted that, although attitude may be a factor under section (a)(4) to consider in determining whether to undertake informal adjustment, it should not be the sole basis for denying informal adjustment.

Rule 15. Detention Hearings in Delinquent and Unruly Cases.

(a) Explanation of Petition and Proceedings

At the beginning of the detention hearing, the court shall inform the parties as to the nature of the complaint, the purpose of the detention hearing, the possible consequences of the court's disposition in that and/or subsequent proceedings, and their legal rights, including:

- (1) The right to remain silent, and that anything the child says may be used against the child in the pending or any other proceeding;
- (2) The right to an attorney, court-appointed if indigent;
- (3) The right to confront and to cross-examine the persons who prepared any police reports, probation reports or other documents submitted, as well as any witness examined by the court during the detention proceedings;
- (4) The right to confront and to cross-examine at any subsequent hearings any witness that may be called to testify against the child at those hearings;
- (5) The right to use the process of the court to compel the attendance of witnesses on the child's behalf; and
- (6) The right to present to the court whatever relevant evidence the child or the parent, guardian or legal custodian, or their counsel, desires to present.

(b) Evidence, Findings, and Order

In conducting a detention hearing, the court may consider reliable hearsay, and upon determining: (1) that there is probable cause to believe that the child committed the offense charged; (2) that it is in the best interest of the child and the public that the child be detained pending a hearing on the petition; (3) that the child's detention is warranted or required by law as provided in *Tenn. Code Ann. § 37-1-114*; and (4) that the immediate welfare of the child and/or the protection of the community so requires, the court shall enter a detention order.

(c) Release of Child

If the court does not make all of the findings set forth in the preceding section, the court shall either order the child discharged forthwith from detention or, in the discretion of the court, release the child to a parent, guardian, legal custodian, or adult relative, with or without bond, pending further proceedings.

Advisory Commission Comments. In unruly cases potentially involving violation of valid court orders, the court should refer to and observe the requirements of the valid court order regulations found in the appendix to these rules.

Rule 16. Preliminary Hearings in Dependent and Neglected and Abuse Cases.

(a) Requirement of a Preliminary Hearing

If an alleged dependent and neglected or abused child is removed from home pursuant to Rule 5 and is not returned to the child's parent, guardian or legal custodian within seventy-two (72) hours, excluding nonjudicial days, of the time of the initial removal, a preliminary hearing shall be held pursuant to *Tenn. Code Ann. § 37-1-117*. The evidence at this hearing may include reliable hearsay.

(b) Waiver of Preliminary Hearing

Any party entitled to a preliminary hearing may waive by knowing and voluntary waiver the right to a preliminary hearing within the seventy-two hour period. Any such waiver may be revoked at any time at which point a preliminary hearing shall be scheduled within seventy-two (72) hours, excluding nonjudicial days, of the revocation of the waiver.

(c) Disposition at Preliminary Hearing

At the conclusion of the hearing, the court shall return the child to the person from whose custody the child was removed unless the court determines that the child's removal is required under *Tenn. Code Ann. § 37-1-114*. If the court determines at the hearing that the child's removal is required under *Tenn. Code Ann. § 37-1-114*, the court may order that the child be placed in the custody of a suitable person or agency as specified in *Tenn. Code Ann. § 37-1-116*. If the court returns the child to the person from whose custody the child was removed, the court may enter an interim or

preliminary order setting forth conditions of the return designed to protect the rights and interests of the child and the parties pending further hearing.

Rule 17. Time Limits on Scheduling Adjudicatory Hearings.

(a) Time Limits, Generally

All cases in which a child is detained or in custody shall be scheduled for adjudication within thirty (30) days of the date the child is taken into custody. All other cases shall initially be scheduled for adjudication within thirty (30) days of the date of filing if such early scheduling appears to the court to be entirely reasonable and possible considering the circumstances of the case, including but not limited to whether the whereabouts of a necessary party is known and whether publication is necessary. In any event, every case shall be scheduled to be heard within ninety (90) days.

(b) Continuances

Upon good cause being shown, or by agreement between the parties, any case may be continued from time to time as the court may direct.

(c) Valid Court Order Cases

Cases of children in detention alleged to be unruly and in violation of a valid court order shall be adjudicated within seventy-two (72) hours exclusive of nonjudicial days of the time detained.

Advisory Commission Comments. The varying time limits in these rules for children in custody or detention and children not in custody indicate the committee's strong intent that cases involving children in custody, and especially in secure detention, be given priority on the docket. Of course, all hearings should be scheduled and held as speedily as possible in the interest of providing timely treatment for children who are found under these rules and the code to require it, and in the interest of allowing children whose cases are eventually dismissed to get on with their lives. The committee recognizes the fact that a child's perception of time is quite different from that of an adult, with shorter periods of time being felt as being much extended, so that it is important that whatever action is taken be taken expeditiously, within the limits of practicability.

There are instances, however, where it will be quite appropriate to allow for a relatively longer period of time prior to disposition, in particular, for the child to prove to the court that a less restrictive disposition may be desirable in his case, for example. This is the purpose of the long ninety-day limits in cases in which children are not being held in custody, and of the provisions allowing for extensions of the time limits. Another valid reason for extensions of the limits would be to obtain psychological evaluations and testing which could not be obtained within the specified time limits.

The committee strongly urges that, unless there are legitimate and extraordinary reasons such as these for such extensions, the limits set forth in the rule be complied with. Further, although Rule 18 allows limits of fifteen and ninety days, respectively, for cases in which a child is or is not in custody, it should be noted that under these rules dispositional hearings may be held immediately following the adjudicatory hearing if the court determines that delay for preparation by the parties is not necessary.

In any case in which the time limits prescribed in Rule 17 are not complied with, or in which the provisions for continuances are not complied with, the court may dismiss the charges with prejudice where it determines that failure to comply with the time limits constitutes a violation of the respondent's right to a speedy trial. In any case in which the time limits prescribed in Rule 18 are not complied with, or in which the provisions for extensions are not complied with, the court may discharge the child from the jurisdiction of the juvenile court if the court determines that the interests of justice so require. However, in such cases the charges themselves would not be dismissed and the child would still have a "record" or involvement with the juvenile court.

Rule 18. Time Limits on Scheduling Dispositional Hearings.

(a) Time Limits, Generally

Disposition shall be made and carried out pursuant to these rules within fifteen (15) days of the adjudicatory hearing if the child is in custody and within ninety (90) days in all other cases.

(b) Extension of Time

The time limits prescribed for making and carrying out the disposition may be extended at the request or with the consent of the child or by order of the court upon good cause shown.

Advisory Commission Comments. The varying time limits in these rules for children in custody or detention and children not in custody indicate the committee's strong intent that cases involving children in custody, and especially in secure detention, be given priority on the docket. Of course, all hearings should be scheduled and held as speedily as possible in the interest of providing timely treatment for children who are found under these rules and the code to require it, and in the interest of allowing children whose cases are eventually dismissed to get on with their lives. The committee recognizes the fact that a child's perception of time is quite different from that of an adult, with shorter periods of time being felt as being much extended, so that it is important that whatever action is taken be taken expeditiously, within the limits of practicability.

There are instances, however, where it will be quite appropriate to allow for a relatively longer period of time prior to disposition, in particular, for the child to prove to the court that a less restrictive disposition may be desirable in the case, for example. This is the purpose of the long ninety-day limits in cases in which children are not being held in custody, and of the provisions allowing for extensions of the time limits. Another valid reason for extensions of the limits would be to obtain psychological evaluations and testing which could not be obtained within the specified time limits.

The committee strongly urges that, unless there are legitimate and extraordinary reasons such as these for such extensions, the limits set forth in the rule be complied with. Further, although Rule 18 allows limits of fifteen and ninety days, respectively, for cases in which a child is or is not in custody, it should be noted that under these rules dispositional hearings may be held immediately following the adjudicatory hearing if the court determines that delay for preparation by the parties is not necessary.

In any case in which the time limits prescribed in Rule 17 are not complied with, or in which the provisions for continuances are not complied with, the court may dismiss the charges with prejudice where it determines that failure to comply with the time limits constitutes a violation of the respondent's right to a speedy trial. In any case in which the time limits prescribed in Rule 18 are not complied with, or in which the provisions for extensions are not complied with, the court may discharge the child from the jurisdiction of the juvenile court if the court determines that the interests of justice so require. However, in such cases the charges themselves would not be dismissed and the child would still have a "record" or involvement with the juvenile court.

Rule 19. Appearance of Attorney.

(a) Entry of Appearance

An attorney who undertakes to represent a party in any juvenile court action, shall immediately notify the court, unless appointed by written order of the court. For the purpose of this rule, the filing of any pleading signed by an attorney constitutes an entry of appearance.

(b) Continued Representation

An attorney who has entered an appearance or who has been appointed by the court shall continue such representation until relieved by the court.

(c) Prosecuting Attorney

Whenever required by statute or rule, or at his or her discretion, the district attorney general shall appear in the juvenile court and prosecute the complaint on behalf of the State. In any matter where the interests of justice so require, pursuant to *Tenn. Code Ann. § 37-1-124*, the district attorney general or city or county attorney, or any attorney upon request of the court shall present the evidence in support of the petition and otherwise conduct the proceedings on behalf of the state.

Advisory Commission Comments. In no event should a youth services officer or other employee of the court appear as prosecutor in juvenile court or fulfill in any way such role. This does not, however, prevent the youth services officer from being the petitioner or a witness in a violation of probation proceeding; nor does it prevent the judge from asking non-adversarial questions of witnesses.

Rule 20. Responsive Pleadings and Motions.

A written answer to a petition shall not be required. Motions made before or during a hearing and responses to motions shall be governed by local rules.

Rule 21. Plea of Guilty in Delinquent and Unruly Cases.

(a) Court's Inquiry of Child

Before accepting a plea of guilty, the court must address the child personally in open court and inform the child of, and determine that the child understands, the following:

(1) The nature of the charge to which the plea is offered and the possible dispositional consequences of the admission; if a specific disposition is the basis of the plea, the child should be informed specifically of the nature of that disposition; and

(2) If the child is not represented by an attorney, that the child has a right to be represented by an attorney at every stage of the proceedings, and that, if necessary, one will be appointed; and

(3) That he or she has the right to plea not guilty or to persist in that plea if it has already been made, the right to confront and cross-examine adverse witnesses, and the privilege against self-incrimination; and

(4) That if the child pleads guilty, there will not be a trial (except as to the disposition in cases in which disposition is not part of the plea agreement), so that by pleading guilty, the child waives the right to a trial on the merits; and

(5) That if the child pleads guilty, the court may ask the child questions about the offense to which the pleadant was made, and if the child answers these questions under oath on the record and in the presence of the child's attorney, if any, the child's answers may later be used against the child in a prosecution for perjury or false statement.

(b) Determination of Voluntariness of Plea

The court shall not accept a plea of guilty without first, by addressing the child personally in open court, determining that the plea is voluntary and not the result of force or threats or promises apart from a plea bargain agreement. The court shall also inquire as to whether the child's willingness to plead guilty results from prior discussions regarding potential dispositions. If a child stands mute or pleads evasively, a plea of not guilty shall be entered by the court.

(c) Factual Basis for Plea

The court shall not enter a judgment upon a guilty plea or shall not approve an agreed upon disposition without making such inquiry as shall satisfy it that there is a factual basis for the guilty plea.

(d) Agreement on Disposition

If the court accepts a guilty plea pursuant to an agreement on disposition, the court shall approve the provided for disposition. If the court rejects the guilty plea, it shall be null and void.

Advisory Commission Comments. In subsection (b) of Rule 21, the court is required to inquire about any prior discussions the child may have had regarding potential dispositions. The court should properly make itself aware of such interactions and "bargains," and of their effect of the child's willingness to plead guilty, before it makes a decision whether to accept any such plea. The court should also ascertain, through this inquiry, with whom any such discussions took place, and whether the child's attorney was present. While it would be within the province of the District Attorney General to initiate such discussions, and possibly within that of Department of Correction probation officers, the

committee considers that it would represent a clear conflict of interest for any court employee such as a youth services officer to conduct such discussions. See the comments to Rules 2 and 8 for further insight on this issue.

The court may at any time prior to the beginning of a dispositional hearing permit a plea of guilty to be withdrawn, and if an adjudication has been entered thereon, set aside such adjudication and allow another plea to be substituted for the plea of guilty. In the subsequent adjudicatory hearing, the court may not consider the plea which was withdrawn as an admission. Evidence of a guilty plea, later withdrawn, or of statements made in connection therewith, would not be admissible in any proceeding against the respondent.

Rule 22. Consent Decrees in Civil Matters.

(a) General Provisions

Most civil matters within the jurisdiction of the juvenile court may be resolved by a written agreement between the parties, submitted to the court in the form of a consent decree. A consent decree, upon being approved by the court and entered in its minutes, becomes the order or decree of the court with all of the force and effect that any order would have after a full hearing prior to adjudication. A consent order or decree should recite that the parties are aware that on the agreement is based the order of the court and that failure to comply therewith without just cause places them in contempt of court and subjects them to such action as the court deems proper within its jurisdiction.

(b) Child Custody and Dependent and Neglected Cases

In child custody and dependent and neglected cases when the parties are in complete agreement in matters of custody, support, and visitation, and a court hearing appears to be unnecessary, the parties may enter into a consent decree. If there is a dependent and neglected petition in the matter the court shall not approve a consent decree unless there has been a social investigation as required by law, and the investigating agency's recommendation concurs with the agreement between the parties.

(c) Modification

A consent decree may thereafter be modified due to a change of circumstances, by agreement between the parties with the approval of the court, or by order of the court upon notification to the parties and a hearing.

Rule 23. Pretrial Diversion in Delinquent and Unruly Cases.

(a) General Provisions

If a designated court officer determines in an unruly or delinquent case that the child does not wish to contest the allegations of the petition, and that a court hearing is not necessary, the parties, following advisement of rights to the child and the child's parent, may agree to pretrial diversion that would suspend the proceedings and continue the child under supervision under terms and conditions negotiated with the designated court officer and approved by the court.

(b) Time Limits

A pretrial diversion agreement shall remain in force for six (6) months unless the child is discharged sooner by the court. Upon application of any party to the proceedings, made before expiration of the six-month period and after notice and a hearing, pretrial diversion may be extended by the court for an additional six months.

(c) Reinstatement of Petition

If prior to discharge by the court or expiration of the pretrial diversion period, a new delinquent or unruly petition is filed against the child, or the child otherwise fails to fulfill express terms and conditions of the pretrial diversion agreement, the petition under which the child was continued under supervision may be reinstated and the case may proceed to adjudication just as if the agreement had never been entered. If failure to comply with the pretrial diversion agreement is alleged, the child shall be given written notice of the alleged violation and an opportunity to be heard on that issue, prior to the reinstatement of proceedings under the original charge.

(d) Dismissal

The petition of a child who is discharged or who completes a period of continuance under supervision without reinstatement of the original delinquent or unruly petition shall be dismissed and the child shall not again be proceeded against in any court for the same offense based upon the same conduct.

Advisory Commission Comments. Pretrial diversion is intended by the committee to replace the former practice of holding cases open for further action. The procedures set forth in this rule essentially allow for a process similar to informal adjustment, with no official finding as to guilt, except that the court in the person of the judge (or referee) is involved in that there must be court approval of any agreement.

Courts should develop written local procedures and criteria for initiating pretrial diversion. Such criteria might include a listing of the types of cases, or charges, which might be handled by pretrial diversion. Pretrial diversion might be initiated by the parties or by the court itself, through motion or through whatever other procedure the court determines is appropriate. Local rules and procedures should also address the issue of how the district attorney general will be notified of cases in which pretrial diversion is being considered, in light of the legitimate public interest in the disposition of more serious cases.

Under this rule, if the child completes the pretrial diversion agreement, the case is dismissed. If the court, or the designated court officer, determines that the case is serious enough that such dismissal should not occur, the case should proceed to court as in any other case warranting official court action, and, if the child readily admits guilt and wishes to negotiate a settlement based upon a plea of guilty, such negotiated settlement should be handled in accordance with Rule 21.

Section to Section References. This rule is referred to in T.C.A. § 37-1-702.

Rule 24. Transfer to Criminal Court in Delinquent Cases.

When the allegations of the petition are so serious and/or the child's age or record is such that transfer of a child to the sheriff to be dealt with as an adult is likely or probable, the court should not hear the case on its merits, but shall proceed to conduct a probable cause hearing only, and announce that intention and purpose when the case is first presented.

(a) Transfer of Jurisdiction of Child to Criminal Court

The court after notice, hearing, and a finding that the criteria for transfer as required by *Tenn. Code Ann. § 37-1-134* exist, may transfer jurisdiction over a child to adult criminal court pursuant to *Tenn. Code Ann. § § 37-1-134* and *37-1-159*.

(b) Transfer Hearing

(1) The judge shall conduct a transfer hearing in all cases in which transfer to criminal court is sought under *Tenn. Code Ann. § 37-1-134*.

(2) At the transfer hearing:

(i) A prosecutor shall represent the state;

(ii) The child shall be represented by an attorney;

(iii) The child may testify as a witness in his or her own behalf and call and examine other witnesses and produce other evidence in his or her own behalf, however no plea shall be accepted by the court; and

(iv) Each witness shall testify under oath or affirmation and be subject to cross-examination.

(3) The same rules of evidence shall apply as are applicable to a general sessions preliminary hearing.

(4) Unless the child appears in any way to be mentally ill or mentally retarded, and unless personally or through counsel, asserts that the child is mentally ill or retarded, it shall be presumed that the child is not committable to an institution for the mentally ill or mentally retarded, and the court may so find. If mental illness is alleged, the court shall order psychological or psychiatric examination at any stage of the proceeding.

(5) If, after considering the evidence including the factors set forth in *Tenn. Code Ann. § 37-1-134*, the court determines that the criteria for transfer as set forth in *Tenn. Code Ann. § 37-1-134* have been satisfied and finds that there are reasonable grounds for transfer as required by *Tenn. Code Ann. § 37-1-134*, the child may be transferred to criminal court for trial as in the case of adults.

(6) If reasonable grounds are not found, the judge shall deny the motion for transfer and set the petition alleging a delinquent offense for trial on its merits in juvenile court or may immediately proceed to hold the adjudicatory hearing with the consent of the respondent. However, the judge shall not at any time preside over the adjudicatory hearing of a case in which the judge has conducted a transfer hearing, if any interested party objects.

(7) Any order of transfer shall specify the grounds for transfer and set bond if the offense is bailable pursuant to state law.

(c) Appeals

Appeal from an order of transfer shall be by motion for an acceptance hearing in accordance with *Tenn. Code Ann. § 37-1-159*.

Advisory Commission Comments. Under *Tenn. Code Ann. § 37-1-134* the court must find reasonable grounds to believe that (i) the child committed the delinquent act as alleged, (ii) the child is not committable to an institution for the mentally retarded or mentally ill, and (iii) the interests of the community require that the child be put under legal restraint or discipline. Regarding § 37-1-134, and subsection (b)(4) of Rule 24, it has been held by both the Tennessee Court of Appeals and Court of Criminal Appeals that, although the burden of proof is on the prosecution on such issue, there is a presumption of noncommittability similar to that relating to sanity in criminal trials. Such presumption can be rebutted by evidence introduced by the defendant, and in such event the burden would shift back to the prosecution to persuade the court the child is not committable. See *Boyd v. State*, Tenn. Crim. App. (December 30, 1979); *State v. Miller*, Tenn. App. Middle Section (June 25, 1976). The committee suggests, however, that it is good practice in any case for the court to arrange for testing and evaluation, evidence of which may be introduced by either of the parties or the court on the issue of committability.

Regarding the provision in subsection (b)(6) of the rule, prohibiting the judge who conducted a transfer hearing from presiding over the adjudicatory hearing in the same case if any interested party objects, *Tenn. Code Ann. § 37-1-134* also prohibits a judge who has conducted a transfer hearing from presiding at a hearing in the same case in criminal court. Such a situation might arise if a judge were sitting specially in criminal court, or if a person who was formerly the juvenile court judge were elected to the criminal court or to any other court which might hear such a case by special arrangement.

Rule 25. Discovery.

By local rule and according to whatever process, informal or otherwise, is appropriate for that court, each juvenile court shall insure that the parties in delinquent and unruly proceedings in juvenile court have access to information which would be available in criminal court and that parties in other cases have access to information which would be available in the circuit court.

Advisory Commission Comments. While the committee intends that parties in juvenile court should not have to resort to de novo appeal or transfer to circuit court to gain access to information important for preparation for trial, the committee was concerned with potential burdens and delays that might be caused if existing criminal and civil discovery methods were applied without modification to juvenile court proceedings. This rule provides for the opportunity for discovery while leaving the formal and informal mechanisms for each juvenile court to develop as is appropriate to that locality. This does not preclude adoption by local court rule of all or some of the discovery mechanisms found in the Tennessee Rules of Civil Procedure and the Tennessee Rules of Criminal Procedure, but does not require it.

Rule 26. Restraining Orders.

(a) On application of a party or on the court's own motion the court may make an order restraining or otherwise controlling the conduct of a person if:

(1) An order of disposition of a delinquent, unruly or dependent or neglected child has been or is about to be made in a proceeding under this chapter, or as otherwise authorized by law;

(2) The court finds that the conduct (i) is or may be detrimental or harmful to the child and (ii) will tend to defeat the execution of the order of disposition; and

(3) Due notice of the application or motion and the grounds therefor and an opportunity to be heard thereon have been given to the person against whom the order is directed.

(b) Restraining orders may be issued upon such terms and conditions, and shall remain in force for such time, as shall seem just and proper to the judge.

Advisory Commission Comments. This rule is taken from *Tenn. Code Ann. § 37-1-152* and Rule 65.07 of the Tennessee Rules of Civil Procedure.

III. ADJUDICATORY AND DISPOSITIONAL HEARINGS**Rule 27. Trial by the Court.**

(a) Conduct of Hearings, Generally

Juvenile court hearings shall be conducted in accordance with the highest standards of courtroom conduct and deportment which shall be prescribed in writing by local rules. Proceedings, except dependent and neglected cases, shall be open to all persons who are properly concerned. In the discretion of the court, the general public may be excluded from any juvenile or paternity proceeding and only those persons having a direct interest in the case may be admitted.

(b) Phases of Hearings

Hearings in juvenile matters shall be conducted in two separate phases, the adjudicatory hearing, and the dispositional hearing, which may be continuous. The court shall first conduct an adjudicatory hearing to determine if the allegations of the petition are sustained. If the allegations of the petition are not sustained the petition shall be dismissed. If the allegations of the petition are sustained, the court may proceed immediately or at a later hearing to the dispositional phase of the proceeding. Pending disposition, the court may enter such order of protection and assistance as the court deems necessary under the circumstances, in the best interest of the child and for the protection of the public.

(c) No Jury Trial

There shall be no trial by jury of any case in juvenile court.

Rule 28. Adjudicatory Hearing.

(a) Scope of Hearing

The adjudicatory hearing is the proceeding at which the court determines whether the factual allegations of the petition are true and whether the evidence supports a finding that a child is delinquent, unruly, or dependent and neglected, or supports a finding authorizing the termination of parental rights as provided in Rule 39. If any of the above findings are made, the determination of the appropriate disposition is to be made pursuant to a dispositional hearing in accordance with Rules 32 and 33 of these rules or, in termination of parental rights cases, Rule 39.

(b) Beginning Adjudicatory Hearing.

(1) All adjudicatory hearings before the juvenile court shall be conducted in accordance with *Tenn. Code Ann. §§ 37-1-124, 37-1-126, 37-1-127, and 37-1-129*. At the beginning of each such hearing, the court shall:

- (i) Ascertain whether the parties before the court are represented by attorneys;
- (ii) Verify the name, age and residence of the child who is the subject of the case, and ascertain the relationship of the parties, each to the other;
- (iii) Ascertain whether all necessary parties are present;
- (iv) Ascertain whether notice requirements have been complied with, and if not, whether the affected parties knowingly and voluntarily waive compliance;
- (v) Explain to the parties the purpose of the hearing and the possible consequences thereof; and
- (vi) Explain to the parties their rights as applicable, including the right to an attorney, the right to remain silent, the right to confront and cross-examine witnesses, and the right to subpoena witnesses and present evidence in their own behalf.

(2) If a party before the court is not represented by an attorney, the court shall ascertain whether the party understands the right to an attorney. If the party wishes to retain an attorney, the court shall continue the hearing a reasonable time to allow the party to obtain and consult with an attorney of the party's choosing. If the party wishes an attorney and is financially unable to hire an attorney, the court shall appoint an attorney to represent such party in all cases in which the party is entitled to a court-appointed attorney by law, or in which the court in its discretion deems the appointment of an attorney to be appropriate. In such cases the court shall continue the hearing a reasonable time to allow the party to consult with the appointed attorney.

(c) Evidence Admissible

In arriving at its adjudicatory decision, the court shall consider only evidence which has been formally admitted. All testimony shall be under oath and may be in narrative form. The Tennessee law of evidence shall apply to all adjudicatory proceedings, as follows: In delinquent and unruly proceedings, no evidence that would be inadmissible in an adult criminal proceeding shall be admitted. In addition, in a delinquent or unruly case, no statement made by a child to the youth services officer or designated intake officer during the preliminary inquiry and evaluation process, or pursuant to informal adjustment under Rule 14, shall be admissible against the child prior to the dispositional hearing. In all other cases, evidence shall be admitted as provided by the Tennessee Rules of Evidence.

(d) Adjudication of Status, Standard of Proof, and Findings in Delinquent Cases

At the conclusion of the adjudicatory hearing in a delinquent case, the court shall enter an order in accordance with the following provisions:

(1) If the court is not satisfied that the delinquent charge has been proved beyond a reasonable doubt, it shall enter an order dismissing the petition.

(2) If the court is satisfied that the delinquent charge has been proved beyond a reasonable doubt and that the child is in need of treatment and rehabilitation, it shall enter a finding of guilty, fix a time for a dispositional hearing to be held in accordance with Rules 18, 32 and 33 of these rules and, where appropriate, provide for disposition of the child pending the dispositional hearing. However, an out-of-court admission by the child which meets the standards of admissibility set forth herein and which was lawfully obtained, although admissible in evidence, shall be insufficient to support an adjudication that the child is delinquent unless the admission is corroborated in whole or in part by other competent evidence.

(3) If the court is satisfied that the delinquent charge has been proved beyond a reasonable doubt, but that the child is not in need of treatment or rehabilitation, it shall enter an order dismissing the petition. In the absence of evidence to the contrary, evidence of the commission of acts which constitute a felony is sufficient to sustain a finding that the child is in need of treatment or rehabilitation.

(e) Adjudication of Status, Standard of Proof, and Findings in Unruly Cases

At the conclusion of the adjudicatory hearing in an unruly case, the court shall enter an order in accordance with the following provisions:

(1) If the court is not satisfied that the unruly charge has been proved by clear and convincing evidence, it shall enter an order dismissing the petition.

(2) If the court is satisfied that the unruly charge has been proved by clear and convincing evidence, it shall enter a finding of guilty, fix a time for a dispositional hearing to be held in accordance with Rules 18, 32 and 33 of these rules and, where appropriate, provide for disposition of the child pending the dispositional hearing. However, an out-of-court admission by the child which meets the standards of admissibility set forth herein and which was lawfully obtained, although admissible in evidence, shall be insufficient to support an adjudication that the child is unruly unless the admission is corroborated in whole or in part by other competent evidence.

(f) Adjudication of Status, Standard of Proof, and Findings in Dependent and Neglected Cases

(1) At the conclusion of the adjudicatory hearing in a dependent and neglected case, the court shall enter an order in accordance with the following provisions:

(i) If the court is not satisfied that the dependent and neglected charge has been proved by clear and convincing evidence (by admission of the allegations or otherwise), it shall enter an order dismissing the petition.

(ii) If the court is satisfied that the dependent and neglected charge has been proved by clear and convincing evidence (by admission of the allegations or otherwise), it shall enter an order adjudicating the child dependent and neglected, fixing a time for a dispositional hearing to be held in accordance with Rules 18, 32 and 33 of these rules and, where appropriate, providing for disposition of the child pending the dispositional hearing.

(iii) If the petition alleged the child was dependent and neglected as defined in *Tenn. Code Ann. § 37-1-102(b)(12)* or if the court so finds regardless of the grounds alleged in the petition, the court shall determine whether the parents or either of them or another person who had custody of the child committed severe child abuse.

(2) The court shall include in its adjudicatory order, or in a separate document, findings of fact upon which it relies for the adjudication embodied in the order, as required by law. Such findings shall include findings of fact on the issue of abuse if required under section (f)(1)(iii) above, and if so required, shall be filed within thirty (30) days of the close of the hearing or, if an appeal or a petition for certiorari is filed, within five (5) days thereafter, excluding Sundays.

(g) Transfer to Home County for Disposition

The case of an out-of-county resident may be transferred to the child's county of residence for disposition.

(h) Adjudication of Status, Standard of Proof, and Findings in Termination of Parental Rights Cases

Requirements for the adjudication of status, standard of proof, and findings in termination of parental rights cases shall be as provided in Rule 39.

Advisory Commission Comments. The definitions in *Tenn. Code Ann. § 37-1-102* for "delinquent child" and "unruly child" both include the criterion that the child at issue be "in need of treatment or rehabilitation." Thus, where a charged offense appears to the court to be an isolated instance and there is no other indication that the child is in such need of treatment or rehabilitation, the committee suggests that dismissal of the case might be appropriate. If the court has developed adequate intake criteria, as discussed in the comment to Rule 8, such cases might be screened out of the formal court process prior to any hearing, pursuant to Rule 12(a). Such cases might be handled by simple warning, counseling and dismissal, or through informal adjustment as provided in Rule 14.

See Rule 30 for further guidance on the issues of the right to, waiver of, and appointment of attorneys.

Advisory Commission Comments [1993]. The former hearsay exception admitting all statements of children concerning abuse is deleted. Instead, children's extrajudicial statements are governed by a specific hearsay exception added as T. R. Evid. 803(25).

The court in certain preliminary and dispositional proceedings, in contrast to adjudicatory hearings, can consider "reliable hearsay." See T. R. Juv. P. 15(b), 16(a), and 32(f).

Rule 29. Procedure When Child Believed to Be Mentally Incompetent.

(a) At Time of Adjudicatory Hearing

(1) If at any time prior to or during the adjudicatory hearing in a delinquent or unruly case, the court has reasonable grounds to believe the child named in the petition may be incompetent to proceed with an adjudicatory hearing, the court may stay the proceedings pending a determination of the child's mental condition.

(2) During the pendency of any such proceeding in which a child is believed to be suffering from mental illness or mental retardation the court may order the child to be evaluated as provided in Tennessee Code Annotated, Title 37.

(3) If the child is found to be incompetent to proceed with the adjudicatory hearing, proceedings shall be commenced for the involuntary hospitalization of the child as provided by law, or the court may inform the parties as to procedures for voluntary admission to public and private mental health facilities in lieu of judicial commitment. If the child does not meet the standards for involuntary hospitalization, but remains incompetent to stand trial, the child shall be released to the appropriate guardian or custodian pending further hearings in juvenile court.

(4) If the child is not hospitalized, or upon the child's release from the hospital, any interested party or the court on its own motion may call the matter up for the purpose of setting an adjudicatory hearing.

(5) If the child is found to be competent to proceed with an adjudicatory hearing, the court shall proceed therewith.

(b) At Time of the Offense

(1) If the child named in the petition intends to introduce expert testimony relating to a mental disease, defect, or other condition bearing upon the issue of whether the child shall, within the time provided for the filing of pretrial motions or at such later time as the court may direct, notify the court in writing of such intention and file a copy of such notice with the clerk. Upon filing of the notice, upon motion of the state, or on its own motion, the court may cause the child to be examined in accordance with the procedures set forth in this rule.

(2) The court, upon good cause shown and in its discretion, may waive the requirements herein set forth and permit the introduction of such defense, or may continue the hearing for the purpose of an examination in accordance with the procedures set forth in this rule. A continuance granted for this purpose will toll the times specified in Rule 17 regarding the time limits for adjudicatory hearings.

(c) Appointment of Expert Witnesses; Detention of Child for Examination

(1) Where the child's sanity or competency is at issue and the court has set the matter for an adjudicatory hearing or a hearing to determine the mental condition of the child, the court may appoint as many as three (3) disinterested qualified experts to examine the child and testify at the hearing. If not performed by private practitioners, such examinations shall be performed at facilities designated by the Commissioner of Mental Health and Mental Retardation. Other competent evidence may be introduced at the hearing. The appointment of experts by the court shall not preclude the state or the child from calling other expert witnesses to testify at the adjudicatory hearing or at the hearing to determine the mental condition of the child.

(2) The court, in its discretion and pursuant to the procedures set forth in Rule 15, may order the child held in detention pending such examination and hearing.

Advisory Commission Comments. There are no reported cases in Tennessee addressing the question of whether or under what circumstances an insanity defense is available in juvenile court proceedings. Application of this defense in juvenile proceedings has been recognized in various jurisdictions. See, e.g. *In re Two Minor Children*, 592 P.2d 166 (Nev. 1979); *State ex rel. Causey*, 363 So. 2d 472 (La. 1978); *Winburn v. State*, 32 Wis. 2d 152, 145 N.W.2d 178 (1966); see also *In re Ramon M.*, 22 Cal. 3d 419, 584 P.2d 524, 149 Cal. Rptr. 387 (1978); *State v. Ferrell*, 209 S.W.2d 642 (Tex. Civ. App. 1948). The leading case holding the insanity defense inapplicable to delinquency proceedings, *In re H.C.*, 106 N.Y. Super. 583, 256 A.2d 125 (1969), was subsequently held to be overridden by modifications of the *New Jersey Juvenile Court Act*. *In re R.G.W.*, 135 N.J. Super. 125, 342 A.2d 869 (1975), aff'd, 70 N.J. 185, 358 A.2d 473 (1976). However, at least one jurisdiction continues to preclude the insanity defense from being asserted at the adjudicatory hearing (although recognizing the claim of incompetence to stand trial). See, *In re C.W.M.*, 407 A.2d 617 (D.C. 1979). [1984.]

This rule is not intended to alter the substantive law respecting the applicability of the insanity defense to juvenile court proceedings in Tennessee or to delineate those circumstances under which such a defense may be available. Rather, it provides procedures for those cases in which "the child intends to introduce expert testimony relating to mental disease, defect or other condition bearing upon the issue of whether the child had the mental state required for the offense charged." [1984.]

Rule 30. Notification and Waiver of Rights of Parties.

(a) Notification and Waiver Where Respondent Represented by Attorney

Where the respondent is represented by an attorney, it is the responsibility of the attorney to fully advise the respondent of the rights which attach at any juvenile court hearing. Decisions to waive any of those rights are to be made by the respondent, after full consultation with the attorney. Nonetheless, the court remains obligated to ascertain whether rights are knowingly and voluntarily relinquished.

(b) Waiver of Rights Where Respondent Not Represented by an Attorney

Any rights guaranteed a respondent in a juvenile court hearing, under the Constitution of Tennessee, the Constitution of the United States, any other law, or any rule of court, may be waived by the respondent who is not represented by an attorney only if the respondent has been adequately advised of the right and knowingly and voluntarily waives the right.

(c) Criteria for Knowing and Voluntary Waivers

No waiver shall be accepted or deemed to have been made knowingly or voluntarily by a respondent where it appears that the respondent is or was unable to make an intelligent and understanding decision because of his or her mental condition, age, education, experience, the nature or complexity of the case, or other factors.

(d) Waiver by Child

Where the respondent is a child, no waiver in the adjudicatory hearing shall be accepted or deemed to have been made knowingly or voluntarily by the child unless the child has consulted with a knowledgeable adult who has no interest adverse to the child.

(e) Procedure for Making and Confirming of Waivers

Any and all waivers of rights shall be made orally in open court, and shall be confirmed in writing by the party and the judge.

(f) Notification of Right to an Attorney

In all stages of juvenile court proceedings in which a respondent is by law entitled to representation by an attorney, the respondent shall be expressly informed of the right to an attorney, unless it has been waived. Where a respondent is not represented by an attorney, the court shall advise the respondent in open court of the right to an attorney and of any right to an appointed attorney. The court shall not proceed with the hearing unless the respondent has waived the right to an attorney in accordance with the provisions of this rule.

(g) Waiver of Right to an Attorney

No respondent shall be deemed to have waived the assistance of an attorney until:

(1) The entire process of notification of the right to an attorney has been completed;

(2) A thorough inquiry into the respondent's comprehension of the right to an attorney and into the respondent's capacity to make the choice intelligently and understandingly has been made by the court and the court has determined that the respondent thoroughly comprehends the right to an attorney, has the experience and intelligence to understand, and does understand the consequences of any waiver;

(3) The respondent has knowingly and voluntarily waived the right to an attorney; and

(4) In the case of a respondent who is a child, the child has consulted with a knowledgeable adult who has no interest adverse to the child.

(h) Notification of Rights to Respondent Who has Waived Right to an Attorney

A respondent who has waived the right to an attorney shall be advised by the court at the outset of any juvenile court hearing of:

- (1) The right to remain silent;
- (2) The right to confront and cross-examine witnesses;
- (3) The right to present testimony in his or her own behalf; and

(4) The right to a dispositional hearing following any adjudication of guilt, the right to appeal any decision of the juvenile court, the manner in which such a right can be perfected, and the right to an attorney on appeal.

(i) Appointment of Attorney

Where a respondent who is entitled by law to a court-appointed attorney does not knowingly and intelligently waive the right to an attorney and cannot afford an attorney, or where the respondent's parents or other persons legally obligated to care for and support the child are able to afford an attorney but refuse to hire one, the court shall appoint an attorney and may assess attorney's fees pursuant to *Tenn. Code Ann. § 37-1-150*.

Advisory Commission Comments. The standard in this rule for waiver of the right to an attorney in juvenile court proceedings is taken from a number of Court of Appeals decisions in which juvenile court findings of delinquency were overturned in post-commitment proceedings. According to these decisions a child is not "competent" to waive the right to counsel "absent presence of a person capable of effectively safeguarding their interests [and] in most cases counsel would fulfill this safeguarding role while the juvenile's parents would not." *State v. Williams*, Tenn. App., Middle Section (June 27, 1975) at 10; *State ex rel. Wilson v. Cook*, Tenn. App., Middle Section (July 1, 1977) at 7-8; *State ex rel. Patillo v. Garrington*, Tenn. App., Middle Section (July 28, 1978) at 8.

Tenn. Code Ann. § 37-1-126 absolutely mandates appointment of an attorney "for a child not represented by his parent, guardian, guardian ad litem, or custodian." The statute contemplates that a child will never appear in court without adult guidance and representation. The ability of a non-attorney adult who is present at the juvenile hearing to safeguard the juvenile's interests, and his or her effectiveness in doing so, are among the factors to consider in reviewing the validity of a waiver. *Patillo*, supra at 9; *State v. Harper*, Tenn. App., Middle Section (October 2, 1979) at 6. Parents are not automatically disqualified from fulfilling this function. However, as the Supreme Court has observed in a different context, "As a general rule, counsel should be provided, and ... any doubt should be resolved in favor of appointment of counsel." *State ex rel. Gillard v. Cook*, 528 S.W.2d 545, 548 (Tenn. 1975).

Rule 31. Witnesses -- Privilege Against Self-Incrimination.

If a person other than a party is called as a witness in the juvenile court and it appears to the court that the testimony or other evidence being sought may tend to incriminate the witness, the court shall advise the witness of the privilege against self-incrimination and of the possible consequences of testifying.

Rule 32. Dispositional Hearings; Orders.

The purpose of dispositions in juvenile court actions is to design an appropriate plan to meet the needs of the child and to achieve the objectives of the state in exercising jurisdiction. When possible, the initial approach should involve working with the child and the family in their own home so that the appropriate community resources may be involved in care, supervision, and treatment according to the needs of the child.

- (a) Separate from Adjudicatory Hearing

A dispositional hearing shall be separate and distinct from the adjudicatory hearing to which it relates. It may be held, however, immediately following the adjudicatory hearing or at a later date in the discretion of the court.

(b) Temporary Order -- Detention Thereunder

Where a continuance of the dispositional hearing is ordered, the court may enter such temporary order as in its discretion seems proper under the circumstances, having due regard for the welfare of the child. Detention may be provided for under a temporary order in accordance with Rule 15(b), but only where such detention appears as a matter of record to be necessary for the protection of the child or others, or where necessary to assure the child's appearance at the subsequent dispositional hearing.

(c) Predisposition Report/Social History; Medical and Psychological Examinations

(1) Prior to the holding of a dispositional hearing:

(i) The court may order a predisposition study pursuant to Rule 33, unless for special reasons in a particular case the court concludes that such a study is unnecessary; and

(ii) The court may order medical and psychological examinations pursuant to *Tenn. Code Ann. §§ 37-1-128* and *37-1-135* and Rules 29 and 38.

(2) Upon receipt of the predisposition report and any medical and psychological reports, the court shall notify each unrepresented party and the attorney for each represented party and make the reports available for inspection in accordance with Rule 33(e).

(d) Beginning Dispositional Hearing

All dispositional hearings before the juvenile court shall be conducted in accordance with *Tenn. Code Ann. § 37-1-129*.

(e) Presentation of Evidence; Argument

The court may consider such evidence as may be presented by a party, reserving the right to all parties to cross-examine and make argument.

(f) Evidence Admissible

In arriving at its dispositional decision, the court shall consider only evidence which has been formally admitted, and the juvenile court record of the child. All testimony shall be under oath and may be in narrative form. The rules of evidence shall apply except that reliable hearsay including, but not limited to, certified copies of convictions or documents such as psychiatric or psychological evaluations of the child or the child's parents or custodian or reports prepared by the Department of Human Services, may be admitted provided that the opposing party is accorded a fair opportunity to rebut any hearsay evidence so admitted. However, this subsection shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or of the state of Tennessee. The parties shall have the right to examine any person who has prepared any report admitted into evidence.

(g) Dispositional Order; Entry

At the conclusion of the dispositional hearing, or as otherwise provided in Rule 18, the court shall enter a dispositional order in accordance with the provisions of *Tenn. Code Ann. § 37-1-131* (delinquent child), *§ 37-1-132* (unruly child), or *§ 37-1-130* (neglected or dependent child), as the case may be.

(h) Advisement of Right to an Appeal

At the dispositional hearing, the court shall advise the respondent of the right to appeal as provided in Rule 36.

(i) Expense of Disposition

Every commitment or placement of a delinquent, unruly, or dependent or neglected child shall, where practicable, be at the expense of the parent, guardian, or custodian of the child according to the ability of such persons to assume said expense. The court shall by order provide for the payment of such expense and where feasible obtain a written recognition of this obligation from said persons.

(j) Orders to Be in Writing

All dispositional orders of the court shall be in writing and signed by the judge.

(k) Foster Care Review

In all cases, if the original disposition order places the child in foster care, the court shall conduct or provide for review as required by Tenn. Code Ann. title 37, chapter 2, part 4.

Advisory Commission Comments. In choosing among statutorily permissible dispositions in delinquent and unruly cases, the judge should select the least restrictive disposition both in terms of kind and duration that is appropriate to the seriousness of the offense, the degree of culpability indicated by the circumstances of the particular case, and the age and prior record of the child. A child should not be committed to any institution if, consistent with the public safety, the child can be treated and rehabilitated through community-level resources.

The committee intends that dispositional hearings and dispositional orders in unruly cases be in accordance with the federal "valid court order" regulations, found in the appendix to these rules. The committee further encourages the making of written findings of fact and reasons for ordering particular dispositions within the law.

At both the adjudicatory hearing and the dispositional hearing, it is appropriate that youth services and probation officers be witnesses regarding admissible evidence of which they have knowledge. However, neither youth services officers nor probation officers should present cases or otherwise act as prosecution for the state in any juvenile court hearing, except as provided in *Tenn. Code Ann. § 37-1-128*, regarding revocation of probation proceedings.

Local rules should provide procedures for the obtaining of the psychiatric and psychological evaluations discussed in subsection (f), including provisions for such evaluations in cases in which a person or child at issue is indigent, and including provisions for the subpoenaing of persons who may have prepared any such evaluations.

Regarding review of dispositional orders, all orders which place a child under court-directed supervision pursuant to *Tenn. Code Ann. § 37-1-131* (delinquent child), *§ 37-1-132* (unruly child), or *§ 37-1-130* (dependent and neglected child), may be reviewed by the court in accordance with the provisions of Rules 34 and 35. The committee encourages courts to keep track of all such cases either informally, or formally as provided in Rule 34. In cases involving commitment of a child to the Department of Correction, review is governed by *Tenn. Code Ann. § 37-1-137*. See also Rule 36 and T.C.A. §§ 37-1-107, 37-1-138, 37-1-159, on the review of juvenile court cases.

Rule 33. Predisposition Report/Social History.

(a) General Provisions

The court may order that in any case or in any class of cases a predisposition report be made including an investigation and evaluation of the habits, surroundings, conditions and tendencies of the child. The report shall be made by the youth services officer, probation officer, or other person designated by the court.

(b) Request for Report; Court Orders

When not otherwise provided, the court may upon its own motion or upon the request of any party order that a report be prepared. The order may specify the time within which the report shall be completed and submitted to the court.

(c) Supplemental Studies

At any time the court may order a supplemental social study to be made.

(d) Consideration of Report by Court

If the allegations of the petition are denied, the report shall not be considered by the court prior to the determination whether the allegations of the petition have been established.

(e) Inspection of Reports; Confidentiality

Generally, the child, the child's attorney, and the child's parent, guardian or legal custodian shall be entitled to inspect the predisposition report and all medical, psychological and other reports on which it is based, except that information protected from disclosure by law. However, the court in its discretion may decline to permit inspection of sensitive reports, or portions thereof, to anyone other than an attorney if it determines that such inspection would be detrimental to the child. If a party is unrepresented and is denied inspection, an attorney shall be appointed for the party

and shall be permitted to inspect reports as herein provided. The court shall issue such orders as are necessary to maintain the confidential nature of information so classified. However, in order to permit response pursuant to Rule 32(f), the court shall disclose, at least to attorneys for the parties, any confidential information relevant to disposition.

IV. POST-HEARING PROCEDURES; MISCELLANEOUS PROVISIONS

Rule 34. Relief from Judgments or Orders -- Modification and Vacation of Orders.

Except in cases where the petition has been heard upon the merits and dismissed, the procedures herein shall be followed to obtain appropriate relief under this rule.

(a) Clerical Mistakes

Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time on its own initiative or on motion of any party, after such notice, if any, as the court orders. During the pendency of an appeal such mistakes may be so corrected before the record on appeal is docketed in the appellate court and thereafter, while the appeal is pending, may be so corrected with leave of the appellate court.

(b) Extraordinary Relief

An order of the court shall be vacated if it appears that it was obtained by fraud or mistake sufficient therefor in a civil action, or the court lacked jurisdiction over a necessary party or of the subject matter, or newly discovered evidence so requires.

(c) Modification for Best Interest of Child

An order of the court may also be modified or vacated on the ground that changed circumstances so require in the best interest of the child, except an order committing a delinquent child to the Department of Correction, or an institution for delinquent children, an order terminating parental rights or an order of dismissal. An order granting probation to a child found to be delinquent or unruly may be revoked, according to the provisions of Rule 35, on the ground that the conditions of probation have not been observed. Placements after a child has been committed to the Department of Correction shall be reviewed as provided in *Tenn. Code Ann. § 37-1-137*, and, in the case of termination of home placement, Rule 35.

(d) Petitions to Modify or Vacate Orders

Any party to the proceeding, the probation officer, or any other person having supervision or legal custody of or an interest in the child may petition the court for the relief provided in subsections (b) and (c) of this rule. The petition shall be styled "Petition to Vacate Order" or "Petition to Modify Order," as the case may be, shall set forth in concise language the grounds upon which the relief is requested, and shall include:

(1) The name of the court to which the application is addressed;

(2) The title and action number of the original proceeding;

(3) The name, age, and address, if any, of the child upon whose behalf the application is brought;

(4) The name and residence address, if known, of the parent, guardian or legal custodian or, if not known or if there is no parent, guardian or legal custodian residing within the state, the name and residence address, if known, of any adult relative residing within the county, or if there is none, the name and residence address of the adult relative residing nearest the court;

(5) The date and general nature of the order sought to be modified or vacated;

(6) A concise statement as to the grounds alleged to require the modification or vacation of the order, including any change of circumstance or new evidence;

(7) A concise statement as to relief requested; and

(8) A statement as to the petitioner's relationship or interest in the child, if the petition is brought by a person other than the child.

A petition to modify or vacate an order under this section shall be liberally construed in favor of its sufficiency.

(e) Procedures

If the petition sets forth proper grounds as provided in subsection (b) above for vacating an order of the court, and if the evidence warrants, the court shall vacate the order after following the procedures set forth below. Except in proceedings to revoke probation or to terminate home placement, which are governed by Rule 35, if the petition sets forth a change of circumstance or new evidence and it appears that the best interest of the child may be promoted by the proposed modification or vacation of order under subsection (c) above, the court may grant the relief petitioned for after following the procedures set forth below.

(1) After the petition is filed, the court shall set a hearing, which shall be within thirty (30) calendar days after the filing of the petition, except as provided in subsection (5) below.

(2) The clerk shall give notice to all necessary parties.

(3) If the child is temporarily placed in a secure facility pending a change in placement, the child, unless sooner released, shall be brought before the juvenile court for a detention hearing as provided in these rules.

(4) If a change of circumstance or new evidence relates to the adjudicatory portion of the previous hearing, the procedures relating to adjudicatory hearings prescribed in these rules shall apply to the determination of that issue. In all other cases, the procedures relating to dispositional hearings prescribed in these rules shall apply.

(5) If any petition to modify or vacate an order is agreed to by all parties entitled to notice under section (e)(2) above, and their attorneys, if any, the court may in its discretion modify or vacate a previous order without a formal hearing.

(6) Where a modification of an order is sought under subsection (c) of this rule, the court may, after reviewing a dispositional order pursuant to this rule, order any disposition which would be permissible at the original dispositional hearing under the Tennessee Juvenile Code and these rules; however, the court may not increase the severity of the disposition without the consent of the necessary parties, except pursuant to a hearing held in accordance with Rule 35, or, if the child is in foster care, in accordance with Tenn. Code Ann. Title 37, Chapter 15 [title 37, chapter 2, part 4].

Advisory Commission Comments. Although *Tenn. Code Ann. § 37-1-139*, on which this rule is largely based, refers to the setting aside and vacation of orders, and to the modification and change of orders, the committee deemed it unnecessary in the rule to use more than two terms to refer to only two possible actions by the court under this rule and under the statute. Therefore, the terms "vacation" and "modification" are used solely throughout, for the sake of simplicity and clarity.

Aside from the correction of clerical mistakes, which may be handled by motion, this rule requires petitions for any modification or vacation of orders. While in adult cases motions are used to initiate such action, the juvenile code at § 37-1-139 requires petitions. As is the case generally with these rules, this rule is intended merely to supplement the code by specifying procedures which will implement the statutory requirements in a manner consistent with the purposes set forth in *Tenn. Code Ann. § 37-1-101* and in Rule 1 of these rules.

This rule overlaps somewhat with Rule 35, regarding revocation of probation and termination of home placement. Although parties are referred to Rule 35 for procedures in revocation of probation cases, the committee intends that in cases where it is alleged that probation as opposed to a harsher disposition was ordered because of false information, the proper procedure would be to file a petition to set aside the order because of fraud, and then to bring the case back up for a rehearing on the disposition. As only the grounds for relief set forth in subsection (c) of the rule are affected by the limitation expressed in subsection (e)(6), the court would be authorized in such a rehearing to order a more restrictive disposition in such cases.

Rule 35. Probation Revocation -- Termination of Home Placement.

(a) Procedure

Proceedings to revoke probation shall be conducted in the same manner as proceedings on petitions alleging delinquent or unruly conduct. Proceedings to terminate home placement shall be conducted in the same manner as

proceedings on petitions alleging delinquent or unruly conduct and in accordance with *Tenn. Code Ann. § 37-1-137*. The child whose probation or home placement is sought to be revoked shall be entitled to all rights that a child alleged to be delinquent or unruly is entitled to under law and these rules, except that the petition shall be styled "Petition to Revoke Probation" or "Petition to Terminate Home Placement" and shall, in addition to fulfilling the other requirements for petitions set forth in Rule 9, state the terms of probation or home placement alleged to have been violated and the factual basis for these allegations.

(b) Disposition in Revocation of Probation Cases

If the child is found by a preponderance of the evidence to have violated a term of probation, the court may:

- (1) Extend the period of probation, or
- (2) Make any other disposition which would have been permissible in the original proceeding.

(c) Disposition in Termination of Home Placement Cases

Dispositions in termination of home placement cases shall be as provided in *Tenn. Code Ann. § 37-1-137*.

Advisory Commission Comments. Although the term "aftercare" is often used to refer to the same process, the term "home placement" is used in this rule, to be consistent with T.C.A. §§ 37-1-102 and 37-1-137, and should be construed to include whatever form of "aftercare" is arranged pursuant to § 37-1-137. Petitions are not absolutely required in termination of home placement cases. Such proceedings may be by administrative hearings conducted upon written reports, as provided for in § 37-1-137.

Rule 36. Appeals.

(a) De Novo Appeal

Appeals may be taken in accordance with *Tenn. Code Ann. § 37-1-159*.

(b) Right to an Attorney

Right to an attorney at all stages of the proceedings shall include the right to an attorney in an appeal.

(c) Notification of Right to Appeal in Delinquent and Unruly Cases

At the dispositional hearing on a petition alleging delinquent or unruly conduct, whether before the referee or judge and whether on a plea of guilty or not guilty, if the respondent is found guilty, he or she shall be informed of the right to appeal, the time limit for appeal, the manner in which to perfect an appeal, and the right to an appointed attorney on appeal if indigent.

(d) Notification, Generally

In all other dispositional proceedings, the judge should notify all parties of their right to appeal and of the time limits for and manner of perfecting an appeal.

(e) Filing

An appeal may be perfected by filing a notice of appeal with the clerk of the juvenile court, within ten (10) days, excluding non-judicial days, of the entry of the order of final disposition. When an appeal has been perfected, the clerk shall cause the entire record in the case, including the juvenile court's findings and written reports from probation officers, court employees or professional consultants, to be taken forthwith to the circuit court, where the case shall be set for a hearing in accordance with *Tenn. Code Ann. § 37-1-159*.

Advisory Commission Comments. Appeals which may be taken under *Tenn. Code Ann. § 37-1-159* include appeals of orders revoking probation or terminating home placement, both of which may be considered "final dispositions" of children, as that section requires.

This rule requires that the juvenile court judge or referee inform any child found guilty of a delinquent or unruly offense of the right to appeal, etc., in subsection (c). Failure to so inform such a child may entitle the child to file a

delayed appeal under the Juvenile Post Commitment Procedures Act, at *Tenn. Code Ann. § 37-1-319*. Subsection (d), while not mandatory, indicates the committee's strong intent that such notifications take place in all cases, both in the interest of informing parties of their rights, and in the interest of preserving the finality of judgments by avoiding any occasion for a writ of certiorari on the basis that a party was not so informed at the hearing or was without fault in being unaware of the right to appeal.

The constitutional prohibition against being placed twice in jeopardy for the same offense precludes the state from seeking de novo appeal in a delinquent or unruly case which has been dismissed following a hearing on the merits. For further discussion of this issue see the comment to Rule 4.

Rule 37. Guardian Ad Litem.

(a) Appointment, Generally

In any juvenile proceeding, on application of a party or on its own motion, the court may appoint a guardian ad litem for a child who is a party to the proceeding.

(b) Requirement Where Parent Absent or a Conflict of Interest

The court shall appoint a guardian ad litem for a child who does not have a parent or guardian appearing on the child's behalf or the parent's or guardian's interests appear to conflict with those of the child.

(c) Requirement in Abuse Cases

In cases of alleged abuse of a child, the court shall appoint a guardian ad litem for the child.

(d) Compensation for Guardian Ad Litem

Reasonable compensation for a guardian ad litem may be allowed as provided by *Tenn. Code Ann. § 37-1-150* or other statutes. If child abuse is alleged, the state shall compensate the guardian ad litem as provided by law.

Rule 38. Protective Orders -- Judicial Consent for Treatment.

(a) General Criteria

Upon its own motion or upon the motion of the child; the child's parents, guardian, legal custodian, or guardian ad litem; a probation officer; a caseworker; the prosecuting attorney; the attorney for any department of government; or any person providing services to the child or the child's parent, guardian, or custodian; the juvenile court may, on the basis of a report that a child's welfare or safety may be endangered or for good cause shown upon the record, issue an injunction, an order, or an ex parte emergency order:

(1) To provide a child with a mental examination or treatment in accordance with *Tenn. Code Ann. §§ 37-1-128* and *37-1-135* and/or with Title 33 of the Tennessee Code Annotated; and/or

(2) To provide a child with a physical examination or treatment, and to that end, the following procedures are also authorized:

(i) Where a physician advises that an emergency exists, the court may order the child detained in a health care facility while the emergency exists;

(ii) Where a physician advises that continued medical care is necessary to protect the child after an emergency has passed, the court may order these services for a reasonable length of time and order the child detained while they are provided;

(iii) Where the emergency has passed or whenever the medical care is no longer necessary, the child shall be returned to the child's parents, guardian, or custodian unless a petition has been filed and the court has determined that the child should not be returned to their custody pending the hearing.

(b) Oral and Telephone Authorizations

Where the need for an emergency order under section (a) of this rule arises and the court is not in regular session, the judge or referee may give oral or telephone authorization to place a child in protective custody or to detain a child in a physical health care service, which authorization shall have the same force and effect as if written and which shall be followed by a written order on the first regular day of court thereafter.

(c) Preliminary Hearings

Whenever a child is placed in protective custody or detained as above provided in section (a) of this rule, the court shall conduct a preliminary hearing as provided in Rules 5 and 16, within seventy-two (72) hours, excluding nonjudicial days. The parents, guardian or other legal custodian or person with whom the child was residing at the time the injunction, order or ex parte emergency order was issued shall be notified of the time and place of the hearing. The child shall also be so notified if over fourteen (14) years of age and not incapacitated because of the need for emergency treatment.

(d) Consent of Parents

At any time when a child is subject to an injunction, order, or emergency order of the court as provided in section (a) of this rule, reasonable effort shall be made to notify the parents, guardian, or other legal custodian for the purpose of gaining consent for such injunction, detention, examination, or treatment. However, if such consent cannot be secured and the child's welfare or safety so requires, the court may authorize the needed injunctive relief, detention, and/or medical examination and treatment.

Rule 39. Termination of Parental Rights.

(a) Petition

A petition to terminate the parental rights of either or both parents to a minor child may be filed by any person who has knowledge of the facts alleged or is informed and believes they are true. The petition shall state clearly that an order for termination of parental rights is requested and that such order would terminate all parental rights and obligations with respect to the child and of the child to the parent arising from the parental relationship, and shall set forth such of the following facts as are known; and if any of the facts are unknown the petition shall so state:

- (1) The name of the child as it appears on the child's birth certificate and the date and place of birth;
- (2) The name and address of the petitioner and facts sufficient to properly identify the petitioner;
- (3) The name and address of the parents of the child. If the name or address of one or both parents is unknown to the petitioner, the petitioner shall set forth with particularity the petitioner's efforts to ascertain the identity or whereabouts of the parent or parents. Such information may be contained in an affidavit attached to the petition and incorporated therein by reference;
- (4) The name and address of any person known as guardian of the child;
- (5) The name and address of any person or agency to whom custody of the child has been given by a court of this or any other state; and a copy of such custody order shall accompany the petition; and
- (6) Facts which are sufficient to warrant a determination that one or more of the grounds for terminating parental rights exist as provided in *Tenn. Code Ann. § 37-1-147*.

In addition to meeting the foregoing requirements, the petition shall contain the following notice: Any appeal of the trial court's final disposition of the petition for termination of parental rights will be governed by Rule 8A, Tennessee Rules of Appellate Procedure, which imposes special time limitations for the filing of a transcript or statement of the evidence, the completion and transmission of the record on appeal, and the filing of briefs in the appellate court, as well as other special provisions for expediting the appeal. All parties must review Rule 8A, Tenn. R. App. P., for information concerning the special provisions that apply to any appeal of this case.

(b) Identity or Location of Parents Unknown

(1) If either the name or location of any parent whose parental rights the petitioner seeks to terminate is unknown to the petitioner, the court may, in its discretion, conduct a preliminary hearing at which it may inquire of any known parent of the child or other person who may have knowledge concerning the identity or whereabouts of such parent and

may appoint an attorney to conduct a diligent search for the parent and to assure that the legal rights of such parent are protected. Should the court ascertain the name or location of the parent, such parent shall be summoned to appear.

(2) If unable to ascertain the name or location of a parent, the court shall order service of the summons upon the parent by publication as provided by law.

(c) Summons and Notice of Proceedings

(1) Upon the filing of the petition, the court shall cause the necessary parties to be summoned in accordance with Rule 10.

(2) A summons shall not be directed to or served upon any parent who has previously surrendered the child to the Department of Human Services or to a licensed child-placing agency, nor to any parent who has surrendered or consented to the adoption of the child as provided by law or to a parent whose parental rights have otherwise been terminated.

(3) The summons shall notify all persons on whom it is served to appear before the court for a hearing on the petition to be held at a time stated on the summons, and shall state that a failure to appear at the hearing, without good cause, will result in the loss of the right to contest the petition.

(d) Answer of Respondent

Any respondent may personally appear or file a written answer to the petition. A written response shall admit or deny the allegations of the petition and shall set forth the name and address of the answering respondent or his or her attorney.

(e) Guardian Ad Litem

Unless a termination of parental rights case is uncontested, the court shall appoint a guardian ad litem for the child, and in any event the court may appoint a guardian ad litem to represent the best interests of the child.

(f) Adjudicatory Hearing on Termination

(1) The court shall conduct an adjudicatory hearing to determine the issues raised by the petition and by any answer(s) filed. Notice of the hearing shall be provided in the summons.

(2) At the beginning of the hearing, any party who appears without an attorney shall be informed of the right to an attorney, and in the case of an indigent respondent, the court shall consider the facts and circumstances alleged and make a determination as to whether an attorney should be appointed.

(3) The court may, as it deems necessary, order the child to be examined by a psychiatrist, a licensed clinical psychologist, a physician, or any other appropriate person or agency. If a parent's ability to care for the child is at issue, the court may order a similar examination of the parent.

(4) The court may for good cause shown continue or take the case under advisement for such time as is required for receiving additional evidence, reports or assessments, or any other necessary information.

(5) All findings of fact shall be based on clear and convincing evidence. Neither the husband-wife, physician-patient, psychologist-patient, or clergy-penitent privilege shall be grounds for excluding any evidence in termination of parental rights proceedings.

(g) Disposition

(1) If the court finds that any one or more of the grounds stated in *Tenn. Code Ann. § 37-1-147* authorizing termination of parental rights exist, the court shall enter an order accordingly unless the court further determines that such termination would be contrary to the best interest of the child.

(2) Should the court conclude that there are no grounds for termination of parental rights, or that the best interests of the child require that such rights should not be terminated, the court shall dismiss the petition, and set forth in the order the facts and conclusions upon which the dismissal is based.

(3) A juvenile court order terminating parental rights shall award complete custody, control, and guardianship of the child to the Department of Human Services or a licensed child-placing agency with the right to place the child for adoption and to consent to the adoption in loco parentis.

(4) When an appeal is taken from the trial court's disposition, the court in its discretion may stay its order or otherwise suspend relief or grant whatever additional or modified relief is deemed appropriate during the pendency of the appeal and upon such terms as it deems proper. The trial court's decision regarding a stay, or other such relief granted pursuant to this subparagraph, may be reviewed by the appellate court pursuant to Rule 7, Tenn. R. App. P.

Advisory Commission Comments. Although Rule 39 states only that in cases where indigent parents have no attorney, the court shall determine whether to appoint an attorney, the appointment of an attorney in cases involving expert testimony or complex issues of law or fact has been suggested by the United States Supreme Court in the case of *Lassiter v. Department of Social Services of Durham County, North Carolina*, 101 S. Ct. 2153 at 2162-2163 (1981).

The rule does not require written findings of fact. However, the committee encourages the making of such written findings, especially in cases involving child abuse. Such findings may be contained in the order of the court or in a separate document, as the court deems appropriate. See the comment to Rule 1 of these rules for further discussion regarding abuse cases.

The Eastern Section of the Tennessee Court of Appeals has held that parental rights may not be terminated for failure of the parents to comply with a foster care plan, unless there has also been compliance by the state with the statutory requirements for foster care review. See *State of Tennessee, Department of Human Services v. Gilbert*, Tenn. App., Eastern Section (April 29, 1982) [unreported].

The court may consider giving notice of termination proceedings to foster parents who have physical custody of a child.