

THE CINA/DELINQUENCY RULES COMMITTEE RECOMMENDS THE FOLLOWING PROPOSAL:

New Delinquency Rule 14.1—Adopting a speedy trial rule for delinquency cases.

The CINA/Delinquency Rules Committee recommends that a speedy trial rule be adopted for delinquency cases. While adjudication trials are rare, the committee concluded that a speedy trial rule could help to more quickly resolve cases, provide accountability, and get juveniles into needed treatment. Delay is reportedly a significant issue in many rural areas.

The new Delinquency Rule 14.1 is based on Criminal Rule 45 but adapted to the delinquency setting. Rather than introduce new standards or language, Rule 45's language is retained where feasible so that judicial officers and parties can look to the familiar caselaw interpreting Rule 45 for guidance.

A couple of the committee's choices at subsection (d) merit discussion.

The proposed language at *paragraph (d)(2)*, which addresses continuances requested by the juvenile, departs significantly from Criminal Rule 45. That paragraph was the focal point of much of the committee's debate. The committee had already decided that the juvenile should not have the power to opt out of the speedy trial rule altogether. But it debated the extent to which the juvenile should be able to hit the pause button—for instance, to allow time to achieve a more favorable outcome. The committee considered a presumption in favor of granting the juvenile's request but wrestled with how that would work with the other factors listed in the rule. Others questioned why have factors at all, apart from the fact that Criminal Rule 45 includes them.

Ultimately, the committee recommended a greatly simplified paragraph (d)(2) with no presumption and no factors. (The interests of the victims are already covered in subsection (h).) The committee members were confident that the parties would make their case for or against the requested continuance. If granted, the time would be excluded under the rule.

Paragraph (d)(3), which addresses continuances requested by the (prosecuting) Department, is also adjusted. The committee agreed that there needed to be high bar set in each of the subparagraphs for time to be excluded. Unlike in criminal cases, bail is not an option for juveniles who are detained, nor is credit available for time served.

The committee-recommended rule reads as follows:

***Tracked changes** show differences from Crim. R. 45; changes from defendant to juvenile, criminal to delinquency, or trial to adjudication or adjudication hearing are not generally shown.

[NEW] Delinquency Rule 14.1. Speedy Adjudication.

(a) **Priorities in Scheduling Adjudication Hearings**~~Cases.~~ The court shall provide for placing delinquency proceedings upon appropriate calendars. Preference shall be given to adjudication hearings and the trial of juveniles in detention shall be given preference over other delinquency cases. The court

shall consider the circumstances of the victim, ~~particularly a victim of advanced age or extreme youth,~~ in setting the hearing date. Adjudication hearing dates in delinquency cases shall be set at the time of arraignment, and if a hearing date is thereafter vacated, the hearing shall be ~~immediately rescheduled~~ set for a date certain.

(b) **Speedy Adjudication Trial Time Limits.** ~~A juvenile charged with a felony, a misdemeanor, or a violation~~ An adjudication hearing shall be held ~~tried~~ within 120 days from the time set forth in paragraph (c) of this rule.

(c) **When Time Commences to Run.**

(1) *Generally.* Except as provided in ~~sub~~paragraphs (2) through (5), the time for adjudication shall begin running, ~~without demand by the juvenile,~~ from the date of arraignment, ~~the charging document is served upon the juvenile.~~

(2) *Refiling of Original Charge.* If a charge is dismissed by the ~~prosecution~~ Department, the refiling of the charge shall not extend the time. If the charge is dismissed upon motion of the juvenile, the time for adjudication shall begin running from the date of arraignment ~~on service of~~ the second charge.

(3) *New Charges.* ~~The Rule 45 speedy adjudication~~ commencement date for a new charge arising out of the same episode shall be the same as the commencement date for the original charge, unless the evidence on which the new charge is based was not available to the ~~prosecution~~ Department or law enforcement on the commencement date for the original charge. When the new charge is based on new evidence from the same episode and the ~~prosecution~~ Department and law enforcement ~~have~~ has acted with due diligence in investigating and bringing the new charge, ~~the Rule 45 speedy adjudication~~ commencement date for the original charge shall be the same as the commencement date for the new charge.

(4) *Mistrial, New Trial, or Remand.* If the juvenile is to be tried again following a mistrial, an order for a new trial, or an appeal or collateral attack, the time for adjudication shall run from the date of mistrial, order granting a new trial, or remand.

(5) *Withdrawal of Admission, or Notice That Juvenile No Longer Intends to Admit to Petition Allegations.* When a juvenile withdraws an admission to all or part of the allegations in the petition, the time for adjudication hearing shall run from the date of the order permitting the withdrawal. When a juvenile who previously informed the court of an intention to admit to all or part of the allegations in the petition notifies the court that the juvenile now intends to proceed to trial, the time for adjudication hearing shall run from the date of that notification.

~~(6) *Minor Offenses.* In cases involving minor offenses as defined in Minor Offense Rule 2, the defendant must be tried within 120 days from the date the defendant's request for trial is received by the court or the municipality, whichever occurs first.~~

(d) **Excluded Periods.** The following periods shall be excluded in computing the time for adjudication hearing:

(1) The period of delay resulting from other proceedings concerning the juvenile, including but not limited to motions to dismiss or suppress, petitions for waiver of juvenile jurisdiction, examinations and hearings on competency, the period during which the juvenile is incompetent to stand trial, interlocutory appeals, and adjudication of other charges. No ~~pretrial motion or petition made prior to adjudication~~ shall be held under advisement for more than 30 days and any time longer than 30 days shall not be considered as an excluded period.

(2) The period of delay resulting from ~~a an adjournment or continuance granted at the juvenile's request. timely request or with the consent of the juvenile and the juvenile's counsel. The court shall grant such a continuance only if it is satisfied that the postponement is in the interest of justice, taking into account the public interest in the prompt disposition of delinquency offenses, and after consideration of the interests of the victim, if known, as provided in (h) of this rule. A juvenile without counsel shall not be deemed to have consented to a continuance unless the juvenile has been advised by the court of the right to a speedy trial under this rule and of the effect of consent.~~

(3) The period of delay resulting from a continuance granted at the timely request of the prosecution, if:

(A) The continuance is granted because of the unavailability of evidence material to the state's case, when the ~~prosecuting attorney~~ Department and law enforcement have ~~has~~ exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will be available at the later date. The period excluded under this subparagraph shall not exceed 30 days while the juvenile is detained, absent a finding of extraordinary circumstances; or

(B) The continuance is granted to allow the ~~prosecuting attorney~~ prosecution ~~in a felony case~~ additional time to prepare the state's case when the allegations involve felony conduct, the Department and law enforcement have exercised due diligence, and additional time is justified because of the exceptional complexity of the particular case.

(4) The period of delay resulting from the absence or unavailability of the juvenile. A juvenile should be considered absent whenever the juvenile's whereabouts are unknown and ~~in addition~~ the juvenile is attempting to avoid apprehension or prosecution, or the juvenile's whereabouts cannot be determined by due diligence. A juvenile should be considered unavailable whenever the juvenile's whereabouts are known but the juvenile's presence for trial cannot be obtained or the juvenile resists being returned to the state for trial.

(5) A reasonable period of delay when the juvenile is joined for trial with a codefendant as to whom the time for trial has not run and there is good cause for not granting a severance. In all other cases, the juvenile shall be granted a

severance in order that the juvenile may be tried within the time limits applicable to the juvenile.

(6) The period of delay resulting from detention of the juvenile in another jurisdiction provided the ~~prosecuting attorney~~ Department has been diligent and has made reasonable efforts to obtain the presence of the juvenile for adjudication. When the ~~prosecution~~ Department is unable to obtain the presence of the juvenile in detention, and seeks to exclude the period of detention, the ~~prosecution~~ Department shall cause a detainer to be filed with the official having custody of the juvenile and request the official to advise the juvenile of the detainer and to inform the juvenile of the juvenile's rights under this rule.

(7) Other periods of delay for good cause.

(e) **Rulings on Motions to Dismiss or Continue.** In the event the court decides any motion brought pursuant to this rule, either to continue the time for the adjudication hearing or to dismiss the case, the reasons underlying the decision of the court shall be identified ~~set forth in full~~ on the record.

(f) **Waiver.** Failure of a juvenile represented by counsel to move for dismissal of the charges under this rule ~~these rules~~ prior to the juvenile admitting to the allegations in the petition ~~plea of guilty~~ or adjudication hearing shall constitute waiver of the juvenile's rights under this rule.

(g) **Absolute Discharge.** If a juvenile is not brought to adjudication hearing before the running of the time for adjudication hearing, as extended by excluded periods, the court upon motion of the juvenile shall dismiss the charge with prejudice. Such discharge bars prosecution for the offense charged and for any other lesser included offense or offenses within the offense charged.

(h) **Victim's Interest in Ruling on Motion to Continue.** Before ruling on a motion for a continuance in a case involving a victim, as defined in AS 12.55.185, the court shall consider the victim's position, if known, on the motion to continue and the effect of a continuance on the victim.