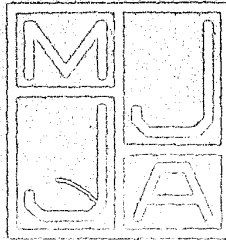


SUPREME COURT OF MISSOURI
RULES OF PRACTICE
AND PROCEDURE
IN JUVENILE COURTS



Missouri Juvenile
Court Association

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National Institute of Justice**

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COURT RULES

SUPREME COURT OF MISSOURI RULES OF PRACTICE AND PROCEDURE OF JUVENILE COURTS Effective January 1, 1987

The Rules of Practice and Procedure in Juvenile Courts including the comments and Source notes were amended in 1986. These amendments, by order of the Supreme Court of Missouri, may be followed prior to January 1, 1987, and shall be followed on or after January 1, 1987. The Rules of Practice and Procedure in Juvenile Courts, as amended, are set forth below.

Rule

- 110. General Provisions.
- 111. Custody and Detention.
- 112. Preliminary Inquiry.
- 113. Informal Adjustment.
- 114. Petition.
- 115. Service of Process and Subpoena.
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- 117. Rules Applicable to All Hearings.
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RULE 110. GENERAL PROVISIONS **ACQUISITIONS**

Rule

- 110.01 Applicability of Rules.
- 110.02 Authority for Rules.
- 110.03 Local Rules of Court.
- 110.04 Procedure When Rules Not Applicable.
- 110.05 Definitions.

110.01 Applicability of Rules

Rules 110 through 128 shall govern practice and procedure in the juvenile courts under Sections 211 RSMo.

Source: Compare Rule 41.01(a). See also Rules 36.01 and 37.01.

110.02 Authority for Rules

Rules 110 through 128 are promulgated pursuant to the authority granted this Court by Section 5 of Article V of the Constitution of Missouri and supersede all statutes and existing court rules inconsistent therewith. They are intended to provide for the just determination of proceedings in the juvenile courts. These Rules shall be construed to assure simplicity and uniformity in judicial procedure and fairness in the administration of justice and to conduce to the welfare of the juvenile and the best interests of the state.

Source: Rules 41.02 and 41.03; compare Rules 36.02 and 37.02. See also Section 211.011 RSMo.

Comment: The rule-making power of the Supreme Court is granted by Article V, Section 5 of the Missouri Constitution, which provides:

The Supreme Court may establish rules of practice and procedure for all courts. The rules shall not change substantive rights, or the law relating to evidence, the oral examination of witnesses, juries, the right of trial by jury, or the right of appeal. The court shall publish the rules and fix the day on which they take effect, but no rule shall take effect before six months after its publication. Any rule may be annulled or amended by a law limited to the purpose.

These Rules are to be construed to achieve the purposes of the Juvenile Code, Chapter 211 RSMo, as set forth in Section 211.011 RSMo.

110.03 Local Rules of Court

The circuit court may adopt rules of practice and procedure governing proceedings in the juvenile court if the rules are not inconsistent with the rules of this Court, the Constitution or statutory law in force. Upon their adoption, copies of any such rules shall be filed with the office of the Clerk of the Supreme Court and of the Clerk of the Court of Appeals for the district in which the circuit court may be, said rules to become effective not sooner than 30 days after their filing. The clerk of the circuit court shall from time to time compile all of the current rules respecting proceedings in the juvenile court and shall maintain copies thereof for distribution to members of the Bar and to the general public upon request.

Source: Compare Rule 50.01; see also Rules 36.03 and 37.03.

Comment: This Rule provides for adoption of local rules by the circuit court, and not by the juvenile division of the circuit court.

110.04 Procedure When Rules Not Applicable

If no procedure is specifically provided in these Rules, the juvenile court shall be governed by the practice and procedure customary in proceedings in equity, and by Rules 41 through 101 to the extent not inconsistent therewith.

Source: Section 211.271.6 RSMo. Compare Rule 41.04; see also Rules 36.04 and 37.04.

Comment: Section 211.171.6 RSMo provides: "The practice and procedure customary in proceedings in equity shall govern all proceedings in the juvenile court."

110.05 Definitions

a. As used in Rules 110 through 128, unless the context requires a different meaning:

- (1) "adult" means a person twenty-one years of age or older;
- (2) "commissioner" means commissioner of the juvenile court;
- (3) "court" or "juvenile court" means a juvenile division of the circuit court or a judicial officer acting therefor;
- (4) "custodian" means parent, spouse of a juvenile, guardian of the person, guardian *ad litem*, or a person having legal or actual custody of a juvenile;
- (5) "detention" means the taking and retention of the person of a juvenile in judicial custody in connection with proceedings under subdivision (2) or (3) of subsection 1 of section 211.031 RSMo;
- (6) "detention facility" means a place of temporary care for juveniles in judicial custody in connection with proceedings under subdivision (2) or (3) of subsection 1 of section 211.031 RSMo, and includes facilities that are physically confining, but does not include a jail or other adult detention facility;
- (7) "judge" means the judge of the juvenile court;
- (8) "judicial custody" means the taking or retention of custody of the person of a juvenile in either protective custody or detention;
- (9) "juvenile" means a person under twenty-one years of age who is subject to the jurisdiction of the juvenile court;
- (10) "Juvenile Code" means Chapter 211 of the Revised Statutes of Missouri, including any amendments or revisions thereof which may hereafter be made;

(11) "juvenile officer" includes deputy juvenile officer and other court personnel the court has authorized to exercise the powers of a juvenile officer;

(12) "law enforcement officer" includes sheriff, deputy sheriff, highway patrol officer, police officer, and marshal;

(13) "legal custody" means the right to the care, custody and control of a juvenile and the duty to provide food, clothing, shelter, ordinary medical care, education, treatment and discipline to a juvenile;

(14) "municipal ordinance" means an ordinance duly adopted by any city, town, village or county of this state;

(15) "parent" means either a natural parent or a parent by adoption, whose parental rights have not been terminated;

(16) "party" means a juvenile who is the subject of a court proceeding, the custodian of the juvenile, the juvenile officer, and any other person denominated by statute as a party in the proceeding;

(17) "person" includes natural persons, corporations, and agencies of government.

(18) "placed in foster care" means placement of a juvenile in the care and custody of an agency or institution authorized by law to care for children or to place them in family homes;

(19) "protective custody" means the taking and retention of the person of a juvenile in judicial custody in connection with proceedings under section 210.125 or subdivision (1) of subsection 1 of section 211.031 RSMo; and

(20) "reasonable efforts" means those efforts that an ordinarily careful, prudent, and diligent person would make under the same or similar circumstances.

b. The singular includes the plural, the plural the singular, and the masculine the feminine, when otherwise consistent with these Rules.

Source: Section 211.021 RSMo; Standard Juvenile Court Act Section 2(k); Legislative Guide for Drafting Family and Juvenile Court Acts Section 1(s); Model Juvenile Court Rule 1. Compare Section 1.030 RSMo.

Comment: 1. The definitions set forth in this Rule differ somewhat from those employed in the Juvenile Code. These changes have been made in the interest of consistency and ease of understanding.

The definition of "adult" to include persons over twenty-one years of age differs from Section 211.021(1) RSMo, which defines an adult as a person seventeen years of age or older. However, there is no conflict between the use of adult as defined in these Rules and as used in the Juvenile Code.

"Child" is not defined in these Rules. Instead, the term "juvenile" is used. While the Juvenile Code employs the term "child" defining it in Section 211.021(2) to mean a person under seventeen years of age, the term itself is not consistently so used in the Juvenile Code; in many instances it also necessarily includes a person over the age of seventeen years. The definition of "juvenile" is used consistently in these Rules.

"Parent" differs from the Section 211.021(5) definition in that the clause "and if the child is illegitimate, 'parent' means the mother," has been deleted. The reasons for the deletion are that the rights and obligations of the father of an illegitimate child have been recognized both by statute and by court decision in Missouri. See Sections 452.150, 452.160 RSMo, and R _____ v. R _____, 431 S.W. 2d 152 (Mo., 1968).

RULE III. CUSTODY AND DETENTION

Rule

- 111.01 When Juvenile May Be Taken Into Judicial Custody.
- 111.02 Procedure Upon Taking Juvenile Into Judicial Custody.
- 111.03 Designation of Detention Facility.
- 111.04 Presentation of Juvenile to Juvenile Officer or Detention Facility.
- 111.05 Notice Upon Admission to Detention Facility.
- 111.06 Temporary Detention.
- 111.07 Court Action Upon Notice That Juvenile is in Detention.
- 111.08 Detention Hearing.
- 111.09 Release From Detention Upon Change of Circumstances.
- 111.10 Rights During Detention.

111.01 When Juvenile May Be Taken Into Judicial Custody

a. A juvenile may be taken into judicial custody

- (1) pursuant to an order of the court;
- (2) pursuant to the laws of arrest applicable to adults if being taken into detention; or

(3) by a law enforcement officer or a physician who has reasonable cause to believe that a child is in imminent danger of suffering serious physical harm or a threat to life as a result of abuse or neglect and such person has reasonable cause to believe the harm or threat to life may occur before a juvenile court could issue a temporary protective custody order or before a juvenile officer could take the child into protective custody;

(4) by a juvenile officer if there is reasonable cause to believe that the juvenile is without proper care, custody, or support and that immediate

protective custody is necessary to prevent personal harm to the juvenile.

b. The taking of a juvenile into judicial custody shall not be considered an arrest.

c. The jurisdiction of the court attaches from the time the juvenile is taken into judicial custody.

Source: New. Compare Sections 211.131.1, .3 RSMo. The substance of the Rule is derived from Uniform Juvenile Court Act Section 13, and Standard Juvenile Court Act Section 16.

Comment: Section 211.101.3 RSMo authorizes the court, after a petition has been filed, to order that the juvenile be taken into custody at once. Section 211.121 provides that the court may issue a *caus* if the juvenile fails to appear in response to a summons. Section 211.131.1 states that when a juvenile is taken into custody for various specified causes, the taking into custody shall not be deemed an arrest.

This Rule states the circumstances under which a juvenile may be taken into custody. Its provisions are consistent with Section 211.131.1, and are intended to clarify the present law.

111.02 Procedure Upon Taking Juvenile Into Judicial Custody

a. Any person taking a juvenile into judicial custody shall immediately make reasonable efforts to notify the juvenile's custodian.

b. When a juvenile is taken into judicial custody, he shall not remain in custody but shall be released at once to his custodian or some other suitable person, unless:

(1) the court has ordered the juvenile to be in detention; or
(2) temporary detention has been ordered pursuant to Rule 111.06; or

(3) the juvenile was taken into protective custody and the court determines the conditions requiring protective custody continue to exist.

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

d. If the juvenile is released in accordance with this Rule, the person who took the juvenile into judicial custody shall promptly notify the juvenile officer in writing of the juvenile's name and address and the reason for taking the juvenile into custody.

e. If the juvenile in detention is not released, he shall immediately be taken to the juvenile officer or a person acting for the juvenile officer or to a detention facility designated by court order pursuant to Rule 111.03, and a written report shall be made to the juvenile officer stating why the juvenile was

taken into judicial custody and why he was not released.

f. If a juvenile is taken into protective custody, any party may request that the court review the facts and circumstances existing and make a determination if probable cause exists that the juvenile is without proper care, custody or support and that it is necessary for the juvenile to remain in protective custody to prevent immediate harm to the juvenile.

Source: Sections 211.061.1 and 211.141.1 RSMo. Compare Standard Juvenile Court Action Section 16; Uniform Juvenile Court Act Sections 14, 15; Model Rules 12 and 13.

Comment: Rule 111.02 follows the present statute by requiring immediate notice to a juvenile's custodian when a juvenile is taken into custody. The Rule is likewise consistent with present statutory language requiring that the juvenile be immediately taken to the juvenile officer or a person acting for him.

The Rule is in accord with the declared statutory purpose that the juvenile should be released to his custodian unless substantial reasons exist for detaining him. Section 211.141.1 RSMo. Further, the Rule adds the requirement that a report be made to the juvenile officer if the juvenile is released. The present statute has no such requirement, and the result may be that the juvenile officer and through him the court may not be apprised of a juvenile's having been taken into custody and subsequently released.

111.03 Designation of Detention Facility

a. Each juvenile court shall by order designate the detention facility or facilities to which juveniles shall be taken when within judicial custody. Copies of the order shall be made available to all law enforcement agencies within the territorial jurisdiction of the court.

b. Pending disposition of the case, the juvenile court may order in writing the detention of the juvenile in one of the following places:

- (1) A juvenile detention facility provided by the county;
- (2) A shelter care facility, subject to the supervision of the court;
- (3) A suitable place of detention maintained by an association having for one of its objects the care and protection of children;
- (4) Such other suitable custody as the court may direct.

c. A child shall not be detained in a jail or other adult detention facility.

Source: Subsection a: Compare Standard Juvenile Court Act Section 17; Uniform Juvenile Court Act Sections 15, 16. Subsection b: Section 211. 151.1 RSMo. Subsection c: New. Section 211.151.2 RSMo.

Comment: Subsection a. of this Rule authorizes the court by order to specify the detention facilities to which juveniles shall be taken and is consistent with current practice. The order should distinguish between juveniles who are taken into custody because neglected or dependent and who represent no danger to themselves or others and juveniles who require secure custody because of the existence of such danger. The purpose of the order is to provide guidance and direction to juvenile court staff and others concerning where a juvenile shall be held pending a specific detention order of the court. Subsection b. restates the content of Section 211.151.1 RSMo. A jail or other adult detention facility shall not be designated as a place of detention. Definitions for "jail or other adult detention facility" and "juvenile detention facility" are provided in Section 211.151.4 RSMo. Subsection c. restates the content of Section 211.151.2 RSMo.

111.04 Presentation of Juvenile to Juvenile Officer or Detention Facility

a. When a juvenile in detention is presented to the juvenile officer, the juvenile officer may, unless the court has ordered detention of the juvenile, release him pursuant to Rule 111.02 or may take the juvenile to a detention facility and there authorize his detention in accordance with Rule 111.06.

b. When a person other than the juvenile officer presents a juvenile in detention to a detention facility operated by the juvenile court exclusively for the detention of juveniles, the person in charge of the detention facility may release the juvenile pursuant to Rule 111.02, unless the court or the juvenile officer has ordered or shall order that juvenile be in detention.

c. When a juvenile in detention is presented to a detention facility, the person in charge of the detention facility shall promptly inform the juvenile officer that the juvenile has been received by the facility and why the juvenile was taken into judicial custody.

d. If the person in charge of the detention facility is unable to locate the juvenile officer within a reasonable time, he shall inform the judge that the juvenile has been presented to the facility and why the juvenile was taken into judicial custody.

e. Upon being informed that a juvenile is in detention, the juvenile officer or judge shall consider the circumstances and shall thereupon either direct the juvenile to be released or authorize the juvenile to be held in the detention facility or some other appropriate facility in accordance with Rules 111.06 and 111.07.

Source: New. Compare Model Rule 12; Standard Juvenile Court Act Section 17; Uniform Juvenile Court Act Section 16.

Comment: This Rule states the procedure to be followed when a juvenile

has been taken into custody and is delivered to the juvenile officer or to a detention facility. It permits the juvenile officer or detention staff to release the juvenile to his custodian, and provides for notice to the juvenile officer or judge.

Cross-Reference: Section 211.141 RSMo.

111.05 Notice Upon Admission to Detention Facility

a. When a juvenile twelve years of age or older is admitted to a detention facility, he shall immediately be informed by the juvenile officer or the person in charge of the facility of:

- (1) the reason for his detention;
 - (2) his right to a detention hearing under Rules 111.07 and 11.08;
- and
- (3) his rights during detention under Rule 111.10.

b. The juvenile officer or the person in charge of the detention facility shall notify the juvenile's custodian as soon as practicable that the juvenile is held in the detention facility, and inform him of the reason for the juvenile's detention and the juvenile's rights set forth in Rule 111.05a. Some communication shall be made in person, if practicable, or by telephone or otherwise.

c. A written notice substantially in the form set forth in Rule 128.06, setting forth the right to remain silent, the right to counsel, the right to a detention hearing, and the rights during detention shall be given by the juvenile officer or the person in charge of the detention facility to a juvenile twelve years of age or older in person and to his custodian in person or by mail.

Source: New. Subsection b. is derived from Section 211.141.2 RSMo. Compare Model Rule 13.

Comment: This Rule sets forth the procedure to be followed when it is determined that a juvenile should be held in a detention facility. It requires notice to the juvenile of the reason for his detention, his right to a detention hearing, his right to counsel, his right to remain silent, and the rights accorded him during detention under Rule 111.10. In addition, this notice must also be given to the juvenile's custodian. The Rule provides both oral and written notice of the right to a detention hearing and the juvenile's rights during detention.

111.06 Temporary Detention

a. A juvenile who has been taken into detention shall not be held in detention for a period of more than twenty-four hours unless the court has authorized detention pursuant to Rule 111.07. A juvenile in detention shall be released only to his custodian or other suitable person.

b. Temporary detention of a juvenile for a period not to exceed twenty-

four hours may be authorized by the juvenile officer, and, if the detention is in a facility operated by the juvenile court exclusively for the detention of juveniles, by the person in charge of the detention facility. The authorization may be in writing or given orally, and if given orally, shall be reduced to writing as soon as practicable.

c. When the juvenile officer or person in charge of a detention facility has authorized temporary detention, he shall as soon as practicable notify the judge that the juvenile is being detained.

d. Temporary detention of a juvenile for a period beyond twenty-four hours may be authorized only by order of the court pursuant to Rule 111.07 or 111.08. If no court order for detention of the juvenile has been made when the period of temporary detention expires, the juvenile shall be released.

Source: New. Compare Section 211.141 RSMo; Model Rule 12; Standard Juvenile Court Act Section 17.

Comment: This Rule permits the juvenile officer to authorize temporary detention for a period not to exceed twenty-four hours. This power to order temporary detention is also given to a person in charge of a detention facility operated by the juvenile court exclusively for the detention of juveniles.

111.07 Court Action Upon Notice That Juvenile is in Detention

a. When the court is informed that a juvenile is in detention it shall examine the reasons therefor and shall immediately:

(1) order the juvenile released pursuant to Rule 111.02; or

(2) order the juvenile continued in detention until a detention hearing is held pursuant to Rule 111.08. An order to continue the juvenile in detention shall only be entered upon the filing of a petition or motion to modify and a determination by the court that probable cause exists to believe that the juvenile has committed acts specified in the petition or motion that bring the juvenile within the jurisdiction of the court under subdivision (2) or (3) of subsection 1 of section 211.031 RSMo.

b. A juvenile shall not remain in detention for a period greater than twenty-four hours unless the court orders a detention hearing. If such hearing is not held within three days excluding Saturdays, Sundays and legal holidays, the juvenile shall be released from detention unless the court for good cause orders the hearing continued.

c. The detention hearing shall be held within the judicial circuit at a date, time and place convenient to the court.

d. Notice of the date, time and place of a detention hearing, and of the right to counsel, shall be given to the juvenile and his custodian in person, by telephone, or by such other expeditious method as is available.

Source: New. Compare Model Rule 15. Paragraph f. is derived from modern statutes and rules which require that when a juvenile is held in detention, a petition must be filed within a short period of time. See, e.g., Standard Juvenile Court Act Section 17 (24 hours, excluding Sundays and holidays); New Mexico Children's Code Section 24 (48 hours, excluding Saturdays, Sundays and legal holidays).

Comment: The Rule is not intended to affect the practice in those juvenile courts which have by local rule provided for a mandatory detention hearing in each case in which a child is detained.

111.08 Detention Hearing

a. At the detention hearing the court shall determine whether the juvenile and his custodian have been informed of the right to counsel. If not, the court shall inform the juvenile or his custodian of the right to counsel, and the court may continue the hearing to enable counsel to be obtained if the right to counsel is not waived.

b. At the detention hearing the court shall receive testimony and other evidence relevant only to the necessity for detention of the juvenile and to whether probable cause exists to believe that the juvenile committed acts that would bring the juvenile within the jurisdiction of the court under subsection (2) or (3) of subsection 1 of section 211.031 RSMo. Any written reports or social records offered to the court at the detention hearing shall be made available to all parties at or prior to the hearing. At the conclusion of the hearing the court shall:

(1) order the juvenile released pursuant to Rule 111.02; or

(2) order the juvenile continued in detention pending further proceedings. The juvenile shall not be continued in detention unless the court finds that there is probable cause to believe that the juvenile has committed acts which would bring the juvenile within the jurisdiction of the court under subsection (2) or (3) of subsection 1 of section 211.031 RSMo and that detention is required:

(a) to protect the juvenile; or

(b) to protect the person or property of others; or

(c) because the juvenile may flee or be removed from the jurisdiction of the courts; or

(d) because the juvenile has no custodian or suitable adult to provide care and supervision for the juvenile and return the juvenile to the court when required; or

(e) because the juvenile is a fugitive from another jurisdiction and an official of that jurisdiction has required the juvenile be detained pending return to that jurisdiction.

Source: New. Compare Model Rule 17; Uniform Juvenile Court Act

Section 17.

Comment: The detention hearing is to determine only whether a juvenile should be continued in detention or released to his custodian. Only if further detention is necessary should the juvenile continue to be held. In addition, the purpose of detention is only to ensure the presence of the juvenile at the hearing upon the petition or to safeguard the juvenile or other persons pending such hearing.

111.09 Release From Detention Upon Change of Circumstances

a. A juvenile held in a detention facility under order of the court may be released upon a showing that a change of circumstances makes continued detention unnecessary.

b. A written request for the release of the juvenile from detention, setting forth the changed circumstances, may be filed by the juvenile, by the juvenile's custodian, or by the juvenile officer.

c. Based upon the facts stated in the request, the court may grant or deny the request without a hearing, or may order that a hearing be held at a date, time and place as determined by the court. Notice of the hearing shall be given to the juvenile and his custodian or counsel prior to the hearing. At the hearing, upon receiving evidence, the court may grant the request and release the juvenile to his custodian or other suitable person, or may deny the request and remand the juvenile to the detention facility.

Source: New. Compare Model Rule 18.

Comment: This Rule recognizes that, following an order for detention, the circumstances which originally justified detention may change so that the juvenile can safely be released. The Rule provides a mechanism for calling to the attention of the court such change in circumstances.

111.10 Rights During Detention

a. When a juvenile is taken to a detention facility or delivered to a juvenile officer he may immediately telephone his custodian and his counsel. Thereafter he shall be allowed to telephone his custodian and his counsel at reasonable intervals. The court may establish rules regulating the time and frequency of such subsequent telephone calls.

b. When a juvenile is admitted to a detention facility, his custodian and his counsel may make an initial visit at any time. After the initial visit, the juvenile may be visited by his counsel at any reasonable time, and by his custodian during the visiting hours of the detention facility, which shall be regularly scheduled at least three days per week unless otherwise ordered by the court. The court may establish rules permitting visits by other persons.

c. If the juvenile refuses to see his custodian, no visits by the custodian shall be allowed unless authorized by the court or the juvenile officer.

d. Except for the juvenile's custodian, the juvenile's counsel, the juvenile officer, and other authorized personnel of the juvenile court, no person shall interview or interrogate a juvenile held in a detention facility unless approval therefor has first been obtained from the juvenile court or the juvenile officer.

e. When a juvenile in custody is represented by counsel no person may interview or interrogate the juvenile concerning the violation of a state law or municipal ordinance by the juvenile unless in the presence of counsel or with the consent of counsel.

Source: New. Compare Model Rule 14.

Comment: This Rule sets forth the rights of a juvenile during the time he is held in a detention facility. It recognizes that the juvenile should be allowed to telephone his custodian and his counsel, and that they should be permitted to visit him at reasonable times.

Since the purpose of holding a juvenile in detention is merely to safeguard the juvenile or others pending adjudication of the petition file in his interest, the Rule limits interviews or interrogations of the juvenile while he is in detention. The Rule is not intended, however, to permit uncontrolled interrogation of the juvenile by the juvenile officer or other court staff concerning the allegations of the petition.

Whether statements made by a juvenile are admissible against the juvenile in either juvenile court or in circuit court in an adult criminal proceeding is controlled by the general statutory and decisional law on the subject.

RULE 112. INITIATION OF PROCEEDINGS

Rule

112.01 Preliminary Inquiry

112.01 Preliminary Inquiry

a. Information that could bring a juvenile within the jurisdiction of the juvenile court shall be referred to the juvenile officer. Such information including the name and address of the informant shall be in writing and unless impracticable shall be signed by the informant.

b. The juvenile officer shall make a preliminary inquiry and if it appears therefrom that the juvenile is within the jurisdiction of the juvenile court the juvenile officer shall either:

- (1) make informal adjustment of the matter under Rule 113; or
- (2) file a petition pursuant to Rule 114.01.

c. If it does not appear to the juvenile officer that the juvenile is within the jurisdiction of the juvenile court, he shall if practicable so notify the informant. Thereupon the informant or any other person may bring the matter directly to the attention of the judge of the juvenile court, by presenting to him the information in writing; and if it appears to the judge that the information could bring the juvenile within the jurisdiction of the juvenile court, the judge may order the juvenile officer to take further action, including making a further preliminary inquiry, or making informal adjustment, or filing a petition.

Source: Model Rule 1.
Cf. Section 211.081 RSMo.

Comment: Under this Rule it is not necessary that the court approve the filing of a petition. See also Rule 114.01. Under the Juvenile Code, only the juvenile officer may file a petition. *State v. Taylor*, 323 S.W.2d 534 (Spr. Mo. App. 1959). This Rule is not intended to modify the result of the Taylor decision.

Paragraph b of this Rule empowers the juvenile officer to make an informal adjustment or to file a petition. While this provision may appear to depart from a literal interpretation of Section 211.081, which states that the juvenile court may make an informal adjustment or authorize the filing of a petition, the Rule adopts what in fact has long been the practice in Missouri.

Furthermore, the statutory procedure if followed literally to mean participation by the judge in both informal adjustment and in authorizing the filing of a petition would impose a far greater burden upon the judge of the juvenile court than he presently seems to have, since it would require his active intervention in virtually every case. Also serious questions are raised as to whether the judge should be required to evaluate and prejudge the facts in order to determine whether a petition should be filed, and then subsequently sit in judgment upon those same facts at the hearing on the petition.

RULE 113. INFORMAL ADJUSTMENT

Rule

- 113.01 Informal Adjustment.
- 113.02 Notice to Parties.
- 113.03 Informal Adjustment Conference.
- 113.04 Termination of Informal Adjustment.

113.01 Informal Adjustment

Informal adjustment shall include the giving of counsel and advice to the juvenile and his custodian by the juvenile officer and other appropriate

persons and may include, with the consent of the juvenile if fourteen years of age or older and with the consent of his custodian, supervision by the juvenile officer and the temporary placement of the juvenile with persons other than his custodian in a manner consistent with Section 453.110.2 RSMo. Referrals may be made to public and private agencies which may provide beneficial guidance or services to the juvenile and his custodian.

Source: New. Compare Alaska Juvenile Court Rule 2 (b) (1).

Comment: Authority for informal adjustment in the juvenile court is found in Section 211.081 RSMo, which provides that upon receipt of information which appears to bring a juvenile within the jurisdiction of the court, "the court shall make or cause to be made a preliminary inquiry," and

On the basis of this inquiry the juvenile court may make such informal adjustment as is practicable without a petition.

113.02 Notice to Parties

a. When it is determined to make an informal adjustment, the juvenile officer shall request the juvenile and his custodian, by letter, telephone or otherwise, to attend a conference at a designated date, time and place.

b. At the time the request to attend the conference is made, the juvenile and his custodian shall be informed that attendance at the conference is voluntary and that they may be represented by counsel at the conference.

Source: New. Compare Model Rule 3.

Comment: The purpose of paragraph b is to make clear to the juvenile and his custodian that the informal adjustment process does not constitute "official" action by the juvenile court which commands obedience on their part, but is merely an offer of advice and counsel to the juvenile and his custodian by the juvenile officer.

113.03 Informal Adjustment Conference

a. If the juvenile and his custodian appear at the informal adjustment conference without counsel, the juvenile officer shall inform them at the commencement of the conference of the right to counsel under Rule 116.01 and the right of the juvenile to remain silent. If either the juvenile or his custodian indicates a desire to be represented by counsel after being informed under Rule 113.03b, the juvenile officer shall adjourn the conference to afford opportunity to secure counsel.

b. The informal adjustment conference shall proceed substantially in the following manner. The juvenile officer shall inform the juvenile and his custodian:

(1) that information has been received concerning the juvenile

which appears to establish the jurisdiction of the juvenile court to act under the Juvenile Code;

(2) that he intends to discuss with them: (A) recommendations for action or conduct in the interests of the juvenile to correct the conditions of behavior or environment that may exist; (B) continuing conferences and contacts with the juvenile and his custodian by the juvenile officer or other authorized persons; and (C) the juvenile's general behavior, his home and school environment, and other facts bearing upon the proposed informal adjustment;

(3) that during the informal adjustment process no petition will be filed;

(4) that the informal adjustment process is voluntary with the juvenile and his custodian, and that they may withdraw from informal adjustment at any time;

(5) that if the juvenile or his 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

(6) that the juvenile officer may terminate the effort at informal adjustment at any time and thereupon may dismiss the juvenile without further proceedings or may file a petition in the juvenile court.

c. The provisions of Rule 113.03b are intended to be advisory in nature and may be used as guidelines in conducting the informal adjustment interview. Modification of these procedures to meet differing circumstances is not prohibited.

d. Following the initial conference, subsequent conferences may be scheduled by the juvenile officer during the informal adjustment process.

Source: New. Compare Model Rules 3 and 4.

Comment: While Section 211.081, RSMo, provides that the circuit court, juvenile division, may "make such informal adjustment as is practicable" the Juvenile Code nowhere describes how informal adjustment is to be accomplished. This Rule recognizes that the informal adjustment process is voluntary on the part of the juvenile and his custodian, and that the court has no power to compel submission to the process or to order any particular course of conduct on the part of either the juvenile or custodian. The content of the Rule expresses currently accepted practice by juvenile court personnel within the informal adjustment process.

113.04 Termination of Informal Adjustment

a. The juvenile officer may either terminate the informal adjustment process and dismiss the juvenile without further proceedings or terminate the

informal adjustment process and file a petition in the juvenile court if at any time:

(1) it appears that the juvenile and his custodian have received the maximum benefit from the informal adjustment process;

(2) the juvenile or his custodian declines to participate further in the informal adjustment process;

(3) the juvenile or his custodian denies the jurisdiction of the court to act under the Juvenile Code;

(4) the juvenile or his custodian expresses his desire that the facts be determined by the court;

(5) the juvenile or his custodian fails without reasonable excuse to attend scheduled conferences;

(6) the juvenile or his custodian appears unable or unwilling to benefit from the informal adjustment process;

(7) the juvenile officer becomes apprised of new or additional information which makes it appear that further efforts at informal adjustment would not be in the best interests of the juvenile or of society; or

(8) other sufficient reasons exist for terminating the informal adjustment process.

b. The informal adjustment process shall not continue beyond a period of six 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 six-month period.

c. Upon termination of the informal adjustment process and dismissal of the juvenile without further proceedings, the juvenile officer shall notify the juvenile and his custodian thereof and report such action to the court.

Source: Generally new. Section 211.081 RSMo authorizes the juvenile court to "make such informal adjustment as is practicable without a petition." Compare Model Rules 4 and 5.

Comment: Under this Rule the informal adjustment process may not in any event continue beyond a period of twelve months from its inception.

The placing of a time limit upon the informal adjustment process is both to reduce the possibility of abuse and to require any long-range program for the child to be approved by the court. That the process may be subject to abuse is recognized in the comment to Section 10 of the Uniform Juvenile Court Act: "There is, however, danger that, unless controlled, the prospect that court proceedings will be

commenced and the fear of their consequences may make the participation of the parties an involuntary one, and their agreeing to prescribed terms a product of compulsion.”

The informal adjustment process does not authorize detention of the juvenile if not otherwise permitted by the Juvenile Code or by these Rules.

RULE 114. PETITION

Rule

- 114.01 Style and Content of Petition.
- 114.02 Amendment of Petition.
- 114.03 Responsive Pleadings and Motions.

114.01 Style and Content of Petition

a. The petition shall be entitled “In the Interest of _____, Male/Female, Age _____.”

b. The petition may be filed upon information and belief, and shall set forth plainly and concisely, with reasonable particularity:

(1) the full name, birth date, and residence of the juvenile in whose interest the petition is filed.

(2) the name and residence of (A) the juvenile’s parents; (B) the juvenile’s legal guardian, if there be one; (C) any person or agency in whose custody the juvenile may be; (D) the juvenile’s nearest relative, if no parent or guardian be known; and (E) the juvenile’s spouse, if any;

(3) the facts which bring the juvenile within the jurisdiction of juvenile court, including the date, place and manner of the acts alleged and the law or standard of conduct, if any, allegedly violated by the acts; and

(4) any other pertinent data or information.

c. The petition shall be filed in the office of the clerk of the juvenile court.

Source: Section 211.091 RSMo. Compare Model Rule 6.

Comment: This Rule generally follows Section 211.091 RSMo in specifying the form and content of the petition. Several relatively minor modifications are introduced in the interest of clarity: the age and sex of the juvenile must appear in the caption, and the facts which bring the juvenile within the jurisdiction of the court are more clearly specified than in Section 211.091. In addition, the Rule provides that the petition may be filed upon the information and belief of the juvenile officer who files it, thereby obviating the requirement of Section 211.091.3.

114.02 Amendment of Petition

The petition may be amended by leave of court at any time. When the petition is amended the court shall grant the parties such additional time to prepare as may be necessary to provide a full and fair hearing.

Source: New. Compare Model Rule 8; Civil Rules 55.53, 55.54.

Comment: When the petition alleges violation by the juvenile of a state statute or municipal ordinance, care must be taken to comply with the requirements of due process of law if the petition is amended at any time after the hearing on the petition has commenced.

114.03 Responsive Pleadings and Motions

No party shall be required to file a responsive pleading. A party may file

(1) a pleading responsive to the petition at any time prior to the hearing or at the commencement thereof; and

(2) a motion at any appropriate time.

Source: New. Compare Model Rule 7.

Comment: A party filing a pleading or motion must effect service thereof upon other parties pursuant to Rule 115.04.

RULE 115. SERVICE OF PROCESS AND SUBPOENAS

Rule

- 115.01 Summons and Service of Petition.
- 115.02 Form and Content of Summons.
- 115.03 Summons May Order Juvenile Taken into Judicial Custody.
- 115.04 Service and Filing of Other Pleadings, Motions and Notices.
- 115.05 Service Upon Juvenile Under Twelve Years of Age.
- 115.06 Waiver of Service by Custodian.
- 115.07 Witness — Subpoena.

115.01 Summons and Service of Petition

a. When a petition is filed and a date for hearing has been set pursuant to Rule 119.01, the clerk of the court shall issue a summons directing the juvenile to be present at the hearing and, unless the court orders otherwise, requiring the custodian of the juvenile to appear at the hearing and to bring the juvenile with him. If the juvenile is in a detention facility, the court shall direct that the juvenile be brought to the hearing.

b. Service of summons shall be made personally upon a juvenile twelve years of age or older. Service upon a juvenile less than twelve years of age shall be made pursuant to Rule 115.05.

c. Service of summons shall be made personally upon the parents of the

juvenile and upon the person having actual custody of the juvenile, provided that if personal service cannot be had upon such persons, service of summons shall be made by registered or certified mail to their last known address. Service of summons upon other parties may be made personally or by registered or certified mail to their last known address. Personal service under this paragraph shall be made in the manner provided in Rule 54.13. The inability to serve any party under this paragraph shall not deprive the court of jurisdiction to proceed.

d. Personal service shall be effected upon the juvenile and, when required, upon his custodian at least twenty-four hours before the time set for the hearing. Registered or certified mail shall be mailed at least five days before the time of the hearing.

e. Service of summons may be made by the sheriff or the juvenile officer or, if ordered by the court, any other suitable person.

Source: Sections 211.101, 211.111 RSMo. Compare Model Rule 20.

Comment: Because it is sometimes necessary to conduct a juvenile court hearing at the earliest possible time, paragraph d of this Rule retains the statutory provision of Section 211.111.2 requiring a minimum of only twenty-four hours' notice of the hearing. However, in most cases the circumstances will permit earlier notice to be given, and this should be done.

The constitutional standard of adequate notice of the charges contained in the petition is set forth in *In the Matter of Gault*, 387 U.S. 1, 33, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967):

Notice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded*** [S]uch written notice [must] be given at the earliest practicable time, and in any event sufficiently in advance of the hearing to permit preparation. ***[Due process] does not allow a hearing to be held in which a youth's freedom and his parents' right to his custody are at stake without giving them timely notice, in advance of the hearing, of the specific issues that they must meet.

115.02 Form and Content of Summons

The summons shall state the date, time and place of the hearing. It shall be substantially in the form set forth in Rule 128.11. A copy of the petition shall be served with the summons.

115.03 Summons May Order Juvenile Taken Into Judicial Custody

If the court determines probable cause to believe:

(1) that the juvenile is without proper care, custody or support and that immediate protective custody is necessary to prevent personal harm to the juvenile; or

(2) that the juvenile has committed acts that would bring the juvenile within the jurisdiction of the court under subdivisions (2) or (3) of subsection 1 of section 211.031 RSMo;

the court may order by endorsement upon the summons that the person service the summons take the juvenile into judicial custody and immediately deliver the juvenile to the juvenile officer.

Source: Compare Model Rule 21 Section 211.101.3 RSMo.

Cross-Reference: Judicial custody is defined in Rule 110.05.a(8). Rule 111.01 specified when a juvenile may be taken into judicial custody without a court order.

115.04 Service and Filing of Other Pleadings, Motions and Notices

All written pleadings subsequent to the original petition, all motions other than those which may be heard *ex parte*, and all notices and other papers which are required to be served upon the parties shall be served upon each of the other parties affected thereby and filed with the court, in the manner set forth in Rule 43.01.

Source: New.

Comment: Juvenile court proceedings are civil in nature. Accordingly, pleadings subsequent to the original petition, and motions and notices should be served in the same manner as in other civil proceedings.

115.05 Service Upon Juvenile Under Twelve Years of Age

a. Service of the petition, motions, notices and other papers upon a juvenile less than twelve years of age shall be effected by making such service upon his custodian.

b. If the interests of a juvenile less than twelve years of age appear to conflict with those of his custodian, the court shall appoint a guardian *ad litem* to represent the interests of the juvenile and to receive service.

Source: New. Compare Model Rule 37.

Comment: This Rule recognizes that a child below the age of twelve may not comprehend the nature of process which might be served upon him in a juvenile proceeding, and provides that service upon his custodian is adequate.

115.06 Waiver of Service by Custodian

a. A custodian may waive service of summons on himself by executing a written waiver. At the time of waiver a copy of the petition shall be given to the custodian.

b. Appearance at the hearing by a custodian shall constitute a waiver by the custodian of service of summons.

Source: Compare Rule 54.66 (e).

Comment: The custodian may waive his right to service of summons, but may not waive the right of the juvenile to such service.

115.07 Witness — Subpoena

A party is entitled to compulsory process for any necessary witness and, upon request of a party or the judge, the clerk of the court shall issue a subpoena stating the date, time and place of appearance.

Source: Compare Sections 211.101.4, 491.090 and 491.100 RSMo. See also Uniform Juvenile Court Act Section 18:

[Subpoena] Upon application of a party the court shall issue, or the court on its own motion may issue, subpoenas requiring attendance and testimony of witnesses and production of papers at any hearing under this Act.

Comment: Rule 115.07 is broader in scope than Section 211.101.4, which states that "Subpoena may be issued requiring the appearance of any other person whose presence, in the opinion of the judge, is necessary."

This Rule gives a party a right to subpoena witnesses that he deems necessary without being first required to convince the judge of the necessity of the witness' presence at the hearing. This change is made for three reasons: First, the broadening of the statutory language is probably necessary to accord due process of law to the parties. Second, to require the judge to make a prehearing determination as to whether a particular witness may be called is inconsistent with the judge's subsequent function of hearing the evidence and determining the facts of the case. Third, to require all parties to secure judicial approval before subpoenas will be issued impinges severely, even in a routine case, upon the limited and valuable time of the judge.

Any abuse of the power to request subpoenas may be dealt with by the court in the same manner as in other civil cases, or in criminal cases.

RULE 116. REPRESENTATION BY COUNSEL

Rule

- 116.01 Right to Counsel.
116.02 Appearance by Counsel.

116.01 Right to Counsel

- a. A party is entitled to be represented by counsel in all proceedings.
- b. The court shall appoint counsel for a juvenile prior to the filing of a petition if a request is made therefor to the court and the court finds that the juvenile is the subject of a juvenile court proceeding and that the juvenile making the request is indigent.
- c. When a petition has been filed, the court shall appoint counsel for the juvenile when necessary to assure a full and fair hearing.
- d. When a petition has been filed and the juvenile's custodian appears before the court without counsel the court shall appoint counsel for the custodian if it finds:
 - (1) that the custodian is indigent; and
 - (2) that the custodian desires the appointment of counsel; and
 - (3) that a full and fair hearing requires appointment of counsel for the custodian.
- e. Counsel shall be allowed a reasonable time in which to prepare to represent his client.
- f. Counsel shall serve for all stages of the proceedings, including appeal, unless relieved by the court for good cause shown. If no appeal is taken, services of counsel are terminated following the entry of an order of disposition.
- g. The juvenile and his custodian may be represented by the same counsel except where a conflict of interest exists. Where it appears to the court that a conflict exists, it shall order that the juvenile and his custodian be represented by separate counsel, and it shall appoint counsel if required by paragraph c or d of this Rule.
- h. When a petition has been filed, a juvenile may waive his right to counsel only with the approval of the court;
- i. Waiver of counsel by a juvenile may be withdrawn at any stage of the proceeding, in which event the court shall appoint counsel for the juvenile if required by paragraph c of this Rule.
- j. Where the services of a public defender or legal aid society are available, the court may appoint counsel therefrom to represent any indigent juvenile or custodian. In all cases where counsel is appointed for the juvenile, the court may assess a reasonable attorney fee and any case. In the discretion of the court such costs may be adjudged against the custodian of the juvenile or

the informing witness as provided by law, or as otherwise provided by law.

Source: New. Compare Model Rule 39; Uniform Juvenile Court Act, Section 26. Section 2kk,27, RSMo, authorizes adjudging costs against the parent of the juvenile or the informing witness.

Comment: Rule 116.01 makes full provision for counsel for the juvenile and his custodian.

116.02 Appearance by Counsel

a. Counsel shall enter his appearance on behalf of a party in the proceeding by filing a written notice of appearance with the court, by filing a pleading, motion or notice signed by counsel, or by appearing in open court and advising the court that he is representing a party.

b. After counsel has entered his appearance, he shall be served with copies of all subsequent pleadings, motions, and notices required by rule or statute to be served on the party he represents.

c. Counsel may withdraw only with leave of court and in a manner consistent with Rule 4 and any applicable local court rules.

Source: New. Compare Model Rule 40.

Comment: This Rule provides the procedure whereby an attorney enters his appearance in a juvenile cause, and whereby he may withdraw from further representation.

RULE 117. PROVISIONS APPLICABLE TO ALL HEARINGS

Rule

- 117.01 Presence and Exclusion of Parties.
- 117.02 Admission to Hearing.
- 117.03 Record of Proceedings.
- 117.04 Rules of Evidence.
- 117.05 Standard of Proof.

117.01 Presence and Exclusion of Parties

a. Except as provided in this Rule, the juvenile and his custodian shall have the right to be present at all times during any hearing.

b. In any hearing where after proper service or notice has been made the juvenile or his custodian fails to appear, the court may in its discretion commence the hearing without the presence of the juvenile or his custodian, except that the hearing may not be commenced without the presence of the juvenile:

- (1) in a hearing under Rule 118 to determine whether the juvenile is a proper subject to be dealt with by the juvenile court; or

(2) in a hearing under Rule 119 upon a petition alleging that the behavior of the juvenile is injurious to his welfare or to the welfare of others, or that the juvenile has violated a state law or municipal ordinance.

c. In any hearing the court may in its discretion exclude the juvenile from any part of the hearing where it appears that exclusion is in the best interest of the juvenile, except:

(1) in a hearing under Rule 118 to determine whether the juvenile is a proper subject to be dealt with by the juvenile court; or

(2) in a hearing under Rule 119 upon a petition alleging that the juvenile has violated a state law or municipal ordinance at any time prior to a finding that the facts alleged in the petition have been established.

d. In any hearing the court may in its discretion exclude the juvenile's custodian from any part of the hearing where it appears that exclusion is in the best interests of the juvenile.

e. In determining whether to proceed without the presence of the juvenile or his custodian, the court shall consider, among other things, the age and emotional maturity of the juvenile, the relationship between the juvenile and his custodian, the nature and probable value of the evidence which may be presented, and whether the juvenile or his custodian has expressly requested to be present during the hearing or during the presentation of the evidence.

f. This Rule shall not restrict the power of the court to exclude an unruly or disruptive person from the hearing where such exclusion is necessary to the orderly conduct of the court proceedings.

g. After the commencement of a hearing with the juvenile present the subsequent voluntary absence of the juvenile shall not prevent the court from conducting the hearing to a conclusion.

Source: New. Compare Model Rule 36.

Comment: Section 211.171.2 RSMo provides that "The hearing may, in the discretion of the court, proceed in the absence of the child and may be adjourned from time to time." This section followed similar juvenile code philosophy current at the time of its adoption. See, e.g., Standard Juvenile Court Act Section 19 (6th ed. 1959): "The child may be excluded from the hearing at any time in the discretion of the judge."

Following the *Gault* decision (387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2nd 527 [1967]), however, it has been recognized that at least in those juvenile court proceedings in which the conduct of the juvenile is in question the court's power to proceed without the presence of the juvenile is restricted. The Comment to Model Rule 36 is instructive:

Section 19 of the Standard Juvenile and Family Court Acts permits the child to be excluded from the hearing

at any time. *Standards for Juvenile and Family Courts* holds (p. 75) that the child should not be excluded during the adjudicatory hearing of a delinquency petition. This position, adopted in the rule, seems to be required by the *Gault* case, which establishes the right to confrontation in a disputed juvenile court adjudication.

In general, children should not be excluded from any hearing and may not be excluded if the testimony concerns their own acts. However, the airing of allegations regarding a child's parents and home life may be traumatic and disruptive of the family relationship. Such material may be elicited in neglect proceedings, in which the parents' acts or omissions, hurtful to the child, are the subject of the court's inquiry. In many such cases, the child need not be present at the hearing at all or may be excused while particular testimony is being given, and his interests can be protected by counsel. If the child is not represented by counsel, it may be appropriate to appoint a guardian *ad litem* to protect him while he is excluded from the courtroom.

A similar position is taken by Section 24 of the Uniform Juvenile Court Act:

The court may temporarily exclude the child from the hearing except while allegations of his delinquency or unruly conduct are being heard.

Section 29 of the Children's Bureau Legislative Guide is similar:

If the court finds that it is in the best interest of the child, his presence may be temporarily, excluded from the hearings except while allegations of delinquency or need of supervision are being heard.

117.02 Admission to Hearings

The court may in its discretion, consistent with the welfare of the juvenile and the objectives of the Juvenile Code, admit to hearings persons with a direct interest in a given case or in the work of the juvenile court.

Source: This Rule is a restatement of Section 211.171.5 RSMo.

Comment: This Rule permits the juvenile court to protect the confidentiality of the proceeding by excluding the general public, but allows the admission to hearings of persons interested in a given case or interested in the work of the court.

117.03 Record of Proceedings

A complete record of all testimony shall be kept by stenographic reporting, by mechanical or electronic device, or by some combination thereof. Exhibits and other tangible evidence shall be preserved by the party offering the same unless otherwise directed by the court.

Source: New. Compare Model Rule 42.

Compare Section 211.171.4 RSMo: "Stenographic notes or an authorized recording of the hearing shall be required if the court so orders or if requested by any party interested in the proceeding."

See Uniform Juvenile Court Act Section 24(c): "If requested by a party or ordered by the court the proceedings shall be recorded by stenographic notes or by electronic, mechanical, or other appropriate means. If not so recorded full minutes of the proceedings shall be kept by the court."

See also Standard Juvenile Court Act Section 19; Children's Bureau Legislative Guide Section 29(b).

Comment: The Juvenile Court in Missouri, as a division of the Circuit Court, has available to it the services of a full-time court reporter. Consequently there is **no good reason why a complete record of all testimony cannot be secured in any hearing in the Juvenile Court.** Thereby a record is provided for purposes of appeal, and, as noted in *Gault*, the judge will be spared "the unseemly duty of testifying under cross-examination as to the events that transpired in the hearings before him." 387 U.S. 1, 58, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967).

This rule is not applicable to informal adjustment conferences under Rule 113.

117.04 Rules of Evidence

At all hearings involving adjudication of the allegations of a petition the rules of evidence applicable to proceedings in equity shall govern.

Source: Section 211.171.6 RSMo. Compare Article V, Section 5 of the Constitution of Missouri.

117.05 Standard of Proof

a. In all hearings upon a petition alleging as a basis for jurisdiction that the juvenile has committed an act or acts which would be a crime if committed by an adult, such act or acts shall be proved beyond a reasonable doubt.

b. In all other hearings the facts alleged shall be proved by clear and convincing evidence.

Source: New. Compare Section 211.171.6 RSMo; Model Rule 26.

Comment: Paragraph a of this Rule follows the holding of the Supreme Court of the United States in *In re Winship*, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970), and of the Supreme Court of Missouri in *In re Fisher*, 468 S.W.2d 198 (Mo. Div. 2, 1971).

RULE 118. DISMISSAL TO ALLOW PROSECUTION UNDER GENERAL LAW

Rule

- 118.01 Order for Hearing.
- 118.02 Notice of Hearing.
- 118.03 Investigation.
- 118.04 Dismissal Hearing.

118.01 Order for Hearing

When the petition alleges that a juvenile between the ages of fourteen and seventeen years has committed an act which would be a felony if committed by an adult, the court, at any time prior to the commencement of a hearing on the allegations of the petition, may, upon its own motion or upon motion by the juvenile officer, the juvenile or the juvenile's custodian, order that a hearing be held for the purpose of determining, in the discretion of the court, whether the juvenile is a proper subject to be dealt with under the provisions of the Juvenile Code. When the order for a hearing is made, the court shall set the date, time and place thereof.

Source: Section 211.071 RSMo.

Comment: Rule 118.01 makes clear that the juvenile or his custodian may move that a hearing be held to determine whether the juvenile is a proper subject to be dealt with by the juvenile court, but the rule leaves to the discretion of the court whether a hearing is to be held.

118.02 Notice of Hearing

a. When a hearing is ordered under Rule 118.01, written notice thereof shall be given to the juvenile and his custodian in the same manner as provided for service of summons in Rule 115.01. Notice of the hearing may be waived by the custodian in accordance with Rule 115.06.

b. Notice shall be substantially in the form set forth in Rule 128.20. It shall contain a statement that the purpose of the hearing is to determine whether the juvenile is a proper subject to be dealt with under the provisions of the Juvenile Code, and that if the court finds that the juvenile is not a proper subject, the petition will be dismissed to allow prosecution of the juvenile under the general law.

Source: New. Compare Model Rule 10.

Comment: Section 211.071 RSMo is silent as to the giving of notice concerning the hearing to be held under the section. *Kent v. United States*, 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966), and *In re Gault*, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed. 2d 527 (1967), hold that adequate prior notice of a hearing is essential. This Rule makes provision for notice to the juvenile and his custodian. Compare Rule 44.01(d), which requires five days' notice of any hearing upon a motion.

118.03 Investigation

a. When the court orders a hearing under Rule 118.01, the juvenile officer shall make an investigation to aid the court in determining whether the juvenile is a proper subject to be dealt with under the provisions of the Juvenile Code.

b. A written report of the investigation, including all social records, shall be made to the court, and, prior to the hearing, may be made available to the parties and shall be made available to counsel.

c. The court may order that a supplemental investigation be made by the juvenile officer and a written report thereof filed, and may continue or adjourn the hearing to afford opportunity to complete the supplemental investigation. Prior to the hearing the report of any supplemental investigation may be made available to the parties and shall be made available to counsel.

Source: Section 211.071 RSMo.

Comment: Section 211.071 RSMo requires that an investigation be made and the report thereof be received by the court before the court may dismiss the petition.

Kent v. United States, 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966), requires that counsel for the child be afforded access to social records which are to be considered by the court in deciding whether to relinquish jurisdiction over the juvenile. *Kent*, however, while apparently recognizing that the right to counsel in a hearing of this kind might be waived, does not specify whether, in the absence of counsel, the parties are to be given access to the records.

118.04 Dismissal Hearing

a. If after a hearing has been ordered under Rule 118.01 it shall appear to the court that the juvenile is not represented by counsel, counsel shall be appointed for the juvenile if required by Rule 116.01.

b. At the hearing the court shall receive evidence relating to whether the juvenile is a proper subject to be dealt with under the provisions of the Juvenile Code. The juvenile officer who prepared the report of investigation may be examined by counsel, and other witnesses may be examined and other evidence received.

c. In reaching its decision the court shall consider all evidence relevant to whether the juvenile is a proper subject to be dealt with under the provisions of the Juvenile Code, including but not limited to:

- (1) whether the offense alleged involved viciousness, force or violence; and
- (2) whether the offense alleged is part of a repetitive pattern of offenses which indicates that the juvenile may be beyond rehabilitation under the Juvenile Code; and
- (3) the record of the juvenile; and
- (4) the programs and facilities available to the juvenile courts.

d. After the conclusion of the hearing if the court finds that the juvenile is not a proper subject to be dealt with under the provisions of the Juvenile Code, it shall order the petition dismissed to permit the juvenile to be prosecuted under the general law, and shall include in its order the reasons for its decision. A copy of the petition and order of the dismissal shall be sent to the prosecuting attorney.

e. If the court does not dismiss the petition to permit the juvenile to be prosecuted under the general law, it shall set a date for the hearing upon the petition, in accordance with Rule 119.01.

Source: New. Compare Section 211.071 RSMo; Model Rule 11. Paragraph c is derived from Minnesota Juvenile Court Rule 8-7 (2).

Comment: This Rule sets forth procedures to be followed at the dismissal hearing. Paragraph c states matters which should be considered by the court in making its determination as to whether the juvenile is a proper subject to be dealt with under the provisions of the Juvenile Code. The enumeration of these specific considerations is not intended to enlarge upon or modify the basic test of Section 211.071 RSMo, which has been upheld in *State v. Williams*, 473 S.W.2d 382 (Mo. 1971). Nor is it intended that paragraph c (1) require a full hearing into the facts of the alleged offense. Paragraph d follows *Kent v. United States*, 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84 (1966), and *State ex rel. T. J. H. v. Bills*, 504 S.W.2d 76 (Mo. banc 1974), which mandate that the court state its reasons for dismissing a juvenile court petition to permit a juvenile to be prosecuted criminally.

RULE 119. HEARING ON PETITION

Rule

- 119.01 Scheduling the Hearing.
119.02 Order of Proceedings.
119.03 Presentation of Evidence.

- 119.04 Order Terminating Proceedings.
- 119.05 Social Study.
- 119.06 Judgment.
- 119.07 Amendment of Judgment.

119.01 Scheduling the Hearing

a. As soon as practicable after the petition is filed, the date for the hearing on the petition shall be set. If the juvenile who is the subject of the petition is in detention, the hearing shall be scheduled for the earliest possible date.

b. The hearing may be held before the scheduled date if the juvenile and his custodian, or if the juvenile is less than twelve years of age the juvenile's custodian alone, consent in writing or in open court that the hearing be held at a specified earlier date.

Source: New. Compare Model Rule 19.

Comment: Delay in adjudication is inimical to the purposes of the Juvenile Code. Particularly, is this true when the juvenile is in detention awaiting a hearing upon the petition.

119.02 Order of Proceedings

a. The order of proceedings should be as follows:

(1) First, the court shall determine that the juvenile and his custodian have been informed of the substance of the petition.

(2) Second, if the juvenile has appeared without counsel the court shall explain to him the right to counsel under Rule 116.01, and shall assign counsel if required by Rule 116.01.

(3) Third, if the petition alleges that the juvenile has violated a state law or municipal ordinance and the juvenile is not represented by counsel, the court shall explain to the juvenile his right to remain silent.

(4) Fourth, the court may inquire: (A) of the juvenile as to whether he admits or denies any of the allegations in the petition that the behavior of the juvenile is injurious to his welfare or to the welfare of others or that the juvenile has violated a state law or municipal ordinance; or (B) of the juvenile and his custodian in any other case, whether they admit or deny any or all of the allegations of the petition.

(5) Fifth, if the facts admitted are sufficient to authorize the court to act under the Juvenile Code, the court may make a finding that the allegations of the petition have been established by the admissions, or may in its discretion receive evidence to corroborate the admissions.

(6) Sixth, if no allegations are admitted or those admitted are insufficient to authorize the court to act under the Juvenile Code, the court shall receive evidence upon the allegations of the petition.

(7) Seventh, when the evidence has been received upon the allegations of the petition the court shall determine whether the allegations of the petition have been established in accordance with the standard of proof set forth in Rule 117.05. (A) If the allegations of the petition have not been so established, the court shall enter a judgment dismissing the petition. (B) If the allegations have been established, the court shall make a finding upon which it exercises its jurisdiction over the juvenile.

(8) Eighth, when the court finds that the allegations of the petition have been established the court may order the submission of a social study or supplemental social study pursuant to Rule 119.05. The court may continue the hearing until a later date pending receipt of the social study, provided that when the juvenile is in detention the court may not continue the hearing for more than thirty days unless a further continuance is agreed to by counsel for the juvenile.

(9) Ninth, the court shall receive evidence and other relevant data offered concerning disposition or treatment that should be ordered for the juvenile.

(10) Tenth, the court shall enter a judgment directing the action that shall be taken regarding the juvenile.

b. The parties shall in all proceedings under this Rule be afforded the opportunity to cross-examine the witnesses, to testify, to present evidence, and to present arguments to the court concerning the weight, credibility and effect of the evidence.

Source: New. Compare Model Rule 23; Section 211.171.1 RSMo.

Comment: This Rule provides that evidence is first heard upon the allegations of the petition to determine whether the court has authority to act under the Juvenile Code, and when this finding is made evidence may then be received upon the issue of disposition or treatment. While the first, or adjudicatory, phase is to be kept separate from the second, or dispositional, phase, there is no requirement that any period of time elapse between the completion of the first phase and the initiation of the second. Thus, the dispositional phase may immediately follow the adjudicatory phase unless the court determines for cause to continue the dispositional phase until a later date, as it would do if it wished to order a new or supplemental social study.

119.03 Presentation of Evidence

In all cases under Rule 119 in which the allegations of the petition are denied, the evidence shall be elicited by counsel for the juvenile officer. If the juvenile officer has no court appointed counsel, the court shall if practicable designate counsel, who may be the prosecuting attorney or his assistant.

Source: New. Compare Section 211.411.1 RSMo.

Comment: With the increased representation of juveniles by counsel, it is evident that some provision is necessary whereby the juvenile officer may have counsel to elicit the evidence in support of the petition. Juvenile courts may retain counsel as a part of the juvenile court staff authorized under Section 211.351.1 RSMo. Compare *Mashak v. Poelker*, 367 S.W.2d 625 (Mo. En Banc 1963), which found authority in Section 211.161.3 for the appointment of an administrative assistant to the juvenile court. However, in less populous circuits where contested cases may not frequently arise, the cost of retained counsel may not be justified. Accordingly, this Rule provides for the designation of the prosecuting attorney or his assistant under the authority of Section 211.411.1 RSMo;

It is the duty of circuit, prosecuting and city attorneys, and county counselors representing the state or a city in any court, to give the juvenile officer such aid and cooperation as may not be inconsistent with the duties of their offices.

119.04 Order Terminating Proceedings

The court may at any time terminate the proceeding and dismiss the petition if it finds such action to be conducive to the welfare of the juvenile and in the best interests of the state.

Source: New. Compare Model Rule 28.

Comment: This Rule embodies the underlying philosophy of the Juvenile Code as stated in Section 211.011 RSMo.

119.05 Social Study

a. The court may order that in any case or in any class of cases a social study be made including an investigation and evaluation of the habits, surrounds, conditions and tendencies of the juvenile. The study shall be made by the juvenile officer or other person designated by the court.

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

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

d. If the allegations of the petition are denied, the social study shall not be considered by the court prior to the determination whether the allegations of the petition have been established as prescribed by Rule 119.02.a(7).

e. The social study and any supplements thereto may be made available to the parties and shall be made available to counsel.

Source: New. Compare Model Rule 29. See Sections 211.081, 211.171 RSMo.

Comment: This Rule recognizes the practice of preparation of a social study concerning the juvenile by the court staff. The present Missouri Juvenile Code makes no provision for a social study as such, but does provide in Section 211.081 RSMo for a "preliminary inquiry to determine the facts," and, in Section 211.171.1 RSMo for the court at the hearing upon the petition to "inquire into the habits, surroundings, conditions and tendencies of the child."

This Rule makes it clear that the court should use the social study only in connection with the dispositional phase of the proceeding, and should neither read nor consider the social study until a finding has been made under Rule 119.02a(7) (B) that the allegations of the petition have been established.

119.06 Judgment

a. The judgment shall include the disposition or treatment of the juvenile.

b. When a judgment is entered, the clerk shall serve a copy of the judgment entry by mail in the manner prescribed in Rule 43.01 upon every party affected thereby who was not present in court in person or by counsel at the time of the rendition of such judgment.

c. If the judgment orders the juvenile placed in foster care, such order shall include determinations that:

(1) reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from his home;

(2) reasonable efforts have been made to make it possible for the juvenile to be returned to his home; and

(3) continuation of the juvenile in his home would be contrary to the welfare of the juvenile.

d. If the judgment otherwise orders placement of the juvenile outside of his home, the court may order that the juvenile be taken into custody for the purpose of making such placement.

Source: New. Compare Model Rule 32; Rule 74.78.

Comment: This Rule recognizes that the parties may not be present at the time the court enters its judgment, and provides for giving notice thereof to the parties.

119.07 Amendment of Judgment

a. Upon motion of any party made not later than fifteen days after entry of judgment the court may amend or correct the judgment.

b. The court retains control over judgments during the thirty-day period after entry of judgment and may vacate, reopen, correct or amend its judgment for good cause within that time. After the filing of notice of appeal and before the filing of the transcript on appeal in the appellate court, the juvenile court, after the expiration of such thirty-day period, may in its discretion vacate or amend the judgment upon stipulation of the parties accompanied by the withdrawal of the appeal.

Source: Compare Rules 73.01(c); 75.01; 78.02.

Comment: The purpose of this Rule is to enable the court to amend or correct the judgment after entry, to make the judgment conform to the pleadings and evidence, and to enable the court to reopen the judgment if it feels that additional evidence is necessary, or additional considerations exist that the court did not take adequately into consideration when it originally entered the judgment. Court action under this Rule generally relates to matters existing or occurring prior to the hearing on the petition. This Rule does not apply to later modification of the judgment based upon facts occurring subsequent to the original judgment. Modification is dealt with in Rule 119.09.

119.08 Post Dispositional Review

a. When a juvenile has been placed in foster care by a court, the court shall hold a dispositional review hearing within eighteen months next following the initial foster care placement and, if the juvenile remains in foster care, the court shall hold dispositional review hearings annually thereafter.

b. After each dispositional review hearing, the court shall determine whether the juvenile should be continued in foster care or should be returned to a parent, guardian or relative or proceedings should be instituted to terminate parental rights and legally free the juvenile for adoption and shall record any actions taken. In making its determination, the court may consider:

(1) whether a case plan has been approved by the court and, if so, whether all parties to the plan are in compliance therewith;

(2) whether there is continuing necessity for the placement;

(3) whether the placement continues to be appropriate;

(4) whether any existing case plan should be modified;

(5) whether the possibility exists of establishing a date by which the juvenile may likely be returned to a parent, guardian or relative or termination of parental rights proceedings commenced to free the juvenile for adoption;

(6) such other factors as are relevant to the individual needs of the juvenile.

c. Written notice of each dispositional review hearing shall be given to the juvenile, his custodian and guardian *ad litem* at least twenty days immediately preceding the hearings. Except as provided by Rule 117, the juvenile and his custodian shall have the right to be present at the hearing and to be represented by counsel.

Source: Section 210.720 RSMo; Compare Public Law 96-272.

Comment: The dispositional review hearings required by this Rule must be completed within the specified time periods. Earlier reviews are encouraged. These reviews are in addition to the review of reports required every six months by section 210.720 RSMo.

Rule 119.09. Modification of Judgment and Termination of Jurisdiction

a. A judgment of the juvenile court under which the court retains jurisdiction over the juvenile may be modified or such jurisdiction terminated at any time on the court's own motion.

b. A judgment in which the court retains jurisdiction may be modified after a dispositional review hearing as follows:

(1) If a record of the hearing was kept as provided in Rule 117.03, based upon findings from the hearing; or

(2) If a record of the dispositional review hearing was not kept as provided in Rule 117.03, based upon findings from a subsequent hearing held to develop information obtained at the dispositional review hearing if a record of the subsequent hearing is kept as provided in Rule 117.03.

c. Any party may at any time petition the court in writing for a modification of the judgment or for termination of jurisdiction. The court may deny the petition without hearing or may, in its discretion, conduct a hearing upon the issues raised by the motion and may make any orders relative to the issues as it deems proper.

d. When any judgment is modified, notice of the modified judgment shall be given every party as prescribed by Rule 119.06b.

Source: Compare prior Rule 121.01.

Comment: This Rule is not intended to suggest that the court without a hearing may modify a judgment so as to impose additional restraints upon the juvenile or upon the custodian or to deprive the custodian of custody or to commit the juvenile to the division of youth services.

Further, under Section 211.041 RSMo, once a juvenile has

been committed to and received by the division of youth services, the court loses jurisdiction over him unless he is returned to the court pursuant to chapter 219 RSMo.

Section 211.181.2 RSMo, specifies when the court may suspend execution of its order of commitment subject to such conditions as the court deems reasonable.

RULE 120. APPEALS

Rule

120.01 Appeals

120.01 Appeals

a. An appeal shall be allowed to the juvenile from any final judgment made under the Juvenile Code and may be taken on the part of the juvenile by the custodian.

b. An appeal shall be allowed to a parent from any final judgment made under the Juvenile Code which adversely affects him.

c. Notice of appeal shall be filed within thirty days after entry of final judgment.

d. Neither the filing of a notice of appeal nor the filing of any motion subsequent to the judgment shall act to stay the execution of a judgment unless the court enters an order staying execution.

Source: Section 211.261 RSMo. Compare Missouri Civil Rule 81.01: "The right of appeal shall be as provided by law."

Comment: Under Article V, Section 5 of the Constitution of Missouri, Supreme Court "rules shall not change***the right of appeal." Accordingly, this Rule merely restates the Juvenile Code provision relating to appeals. It should be noted that the Missouri Supreme Court has held that an order dismissing a petition to allow prosecution of a juvenile as an adult, under Section 211.071 RSMo. (Juvenile Rule 118) is not appealable under Section 211.261. *In the Interest of T. J. H.*, 479 S.W.2d 433 (En Banc 1972).

RULE 121. TERMINATION OF PARENTAL RIGHTS

121.01. Termination, When

If a petition is filed by the juvenile officer pursuant to Section 211.447 RSMo, and if the court finds after the hearing held pursuant to Section 211.457 RSMo, that termination is in the best interest of the juvenile and that the statutory conditions for termination exist, the court may terminate the rights of a parent to a juvenile.

Source: New.

Comment: The provisions of former Rule 121, relating to modification of judgment, are encompassed in Rule 119.09.

121.02. Style and Content of Petition

The petition for termination of parental rights shall be in the form provided by Rule 114.01.

Source: New.

RULE 122. RIGHTS OF JUVENILES

Rule

- 122.01 Fingerprinting and Photographing.
- 112.02 Juvenile Court Records to be Confidential.
- 122.03 Law Enforcement Records of Juveniles to be Kept Separate.
- 122.04 Sealing of Court Files and Destruction of Records.
- 122.05 Notification of Rights.

122.01 Fingerprinting and Photographing

a. When a juvenile has been taken into judicial custody no law enforcement officer or juvenile officer shall take or authorize the taking of fingerprints or photographs of the juvenile without the prior oral or written consent of the court.

b. The court may at any time order the destruction of all originals and copies of fingerprints or photographs taken of the juvenile.

Source: Section 211.151.3 RSMo. Compare Model Rule 43.

Comment: In the event that the court gives oral consent to the taking of fingerprints or photographs, the consent should be promptly reduced to writing in order to avoid future uncertainty.

No apparent reason exists why the court cannot, in granting consent to fingerprint or photograph a juvenile, impose limiting conditions upon its consent, such as that neither the originals nor copies of the fingerprints or photographs be released to other municipal, state or federal agencies without express consent of the court.

Paragraph b refers only to fingerprints and photographs taken in connection with a juvenile proceeding, by law enforcement officers or the juvenile officer.

122.02 Juvenile Court Records to be Confidential

The records of the juvenile court as well as all information obtained and social records prepared in the discharge of official duty for the court shall be kept confidential and shall be open to inspection only by order of the judge of the juvenile court or as otherwise provided by statute.

Source: Section 211.321.1 RSMo.

Comment: This Rule restates the substance of Section 211.321.1 RSMo, which represents a public policy decision by the General Assembly to limit the disclosure of juvenile court records.

122.03 Law Enforcement Records of Juvenile to be Kept Separate

All records of juveniles made and retained by law enforcement officers and agencies shall be kept separate from the records of other persons and shall not be open to inspection or their contents disclosed or distributed, except by order of the judge of the juvenile court. This Rule shall not apply to all such records of a juvenile in a case in which the court has dismissed the petition under Rule 118.04 to permit prosecution under the general law. The term "records", as used in this Rule, shall include but is not limited to fingerprints and photographs of the juvenile.

Source: Section 211.321.2 RSMo.

Comment: This Rule restates the substance of Section 211.321.2 RSMo.

122.04 Sealing of Court Files and Destruction of Records

The court may, either upon its own motion or upon application by the juvenile or his representative, or upon application by the juvenile officer, enter an order to destroy all social histories, records and information, other than the official court file, and may enter an order to seal the official court file, as well as to seal all law enforcement officers' records at any time after the juvenile has reached his seventeenth birthday, if the court finds that it is in the best interest of the juvenile that such action or any part thereof be taken, unless the jurisdiction of the court is continued beyond the juvenile's seventeenth birthday, in which event such action or any part thereof may be taken by the court at any time after the closing of the juvenile's case.

Source: Section 211.321.3 RSMo.

Comment: This Rule restates the substance of Section 211.321.3.

122.05 Notification of Rights

Prior to in custody interrogation, the juvenile shall be advised by the juvenile officer that he has the right to remain silent, that he has the right to an attorney and if he is unable to afford an attorney that one will be provided for him, that whatever he says to the juvenile officer or juvenile court personnel cannot be used in any proceedings except juvenile court, that if he does talk he has the right to stop talking at any time and that whatever he says to the police or others other than the juvenile officer or juvenile court personnel may be used against him in the event he is prosecuted as an adult.

Source: The rule is new. Compare Model Rule 38; Uniform Juvenile Court Act § 27(6). It derives in part from Section 211.271(3), RSMo, as amended.

Comment: The purpose of this rule is to provide that a juvenile in custody shall be advised of his rights and the scope of such advice. It also recognizes the limitation on the use of admissions, confessions and statements by the child to the juvenile officer or juvenile court personnel.

RULE 123. PHYSICAL AND MENTAL EXAMINATION

Rule

- 123.01 Physical and Mental Examination of Juvenile.
123.02 Physical and Mental Examination of Custodian.

123.01 Physical and Mental Examination of Juvenile

a. At any time after a petition has been filed, the court may order that the juvenile be examined by a physician, psychiatrist or psychologist appointed by the court to aid the court in determining:

- (1) any allegation in the petition relating to the juvenile's mental or physical condition;
- (2) the juvenile's competence to participate in the proceedings;
- (3) whether the juvenile is a proper subject to be dealt with by the juvenile court; or
- (4) any other matter relating to the adjudication or disposition of the case, including the proper disposition or treatment of the juvenile.

b. The services of a public or private hospital, institution, or psychiatric or health clinic may be used for the purpose of examination under this Rule.

Source: Section 211.161 RSMo. Compare Civil Rule 60.01. See also Standard Juvenile Court Act Section 22; Model Rule 41; Uniform Juvenile Court Act Section 28(b).

Comment: Many cases coming before the juvenile court involve the issue of the mental or physical condition of the juvenile. This Rule empowers the court to order an examination of the juvenile at any time after a petition has been filed. Thus, a pre-adjudication examination may be made to aid in determining such issues as whether the juvenile has been subjected to neglect or abuse, or whether the juvenile is mentally responsible for his actions or is in a fit condition to proceed. Where the court has determined that the juvenile is within its jurisdiction, an examination may be of substantial aid in deciding the proper disposition of the juvenile.

Under Section 211.161 RSMo, the juvenile court may cause a juvenile to be examined "in order that the condition of the child may be given consideration in the disposition of his case." This Rule makes clear that the court may order an

examination in connection with any aspect of the proceeding, provided that a petition has first been filed. Until a petition is filed, there is no case before the court, and there is no sufficient ground for requiring the juvenile to submit to an examination.

Where the examination is made prior to the adjudicatory phase of the hearing, in a case in which the petition alleges a violation of state law or municipal ordinance, the right of the juvenile not to incriminate himself is not meant to be violated by this Rule. The juvenile should be afforded protection similar to that given adults by Section 552.020.11 RSMo.

123.02 Physical and Mental Examination of Custodian

a. Prior to adjudication and after hearing the court may order examination by a physician, surgeon, psychiatrist or psychologist of a person whose ability to care for a juvenile who is before the court is in question.

b. After adjudication the court may order examination by a physician, surgeon, psychiatrist or psychologist of a person whose ability to care for a juvenile who is before the court is in question.

Source: Standard Juvenile Court Act Section 22. Compare Rule 60.01; Minnesota Juvenile Court Rule 10-2(3).

Comment: A physical or mental examination of the juvenile's custodian may be necessary to the full and proper adjudication of the allegations of a petition charging parental neglect or that the juvenile is subject to injurious environment or associations.

Further, in the dispositional stage of any proceeding, the court may need information concerning the physical or mental condition of the custodian in determining whether to place the juvenile in the custody of his parent or guardian, or to place the juvenile elsewhere. Authority for this Rule is derived in part from the fact that the parent or guardian is a party to a juvenile court proceeding. *Cf. In re J. _____ O. _____*, 372 S.W.2d 512 (St.L.Mo.App. 1963).

RULE 124. SEARCH WARRANTS

Rule

124.01 Search Warrants.

124.01 Search Warrants

Application for a search warrant in connection with a juvenile court proceeding may be made to the juvenile court.

Source: New. Compare Model Rule 44.

Comment: The circuit court, of which the juvenile court is a division, has authority to issue search warrants. Rule 34.01. This Rule is permissive, in that the application may, but need not, be made to the juvenile court.

RULE 125. TRANSFER OF SUPERVISION

Rule

125.01 Transfer of Proceedings or Supervision.

125.01 Transfer of Proceedings or Supervision

a. On motion of either party or on its own motion made prior to final disposition, the court in which a proceeding is commenced may transfer the proceeding to the court located in the county of the juvenile's residence for further action.

b. Upon the motion of any party or upon its own motion at any time following a judgment of disposition or treatment the court having jurisdiction of the cause may place the juvenile under the supervision of another juvenile court within or without the state with the consent of the receiving court.

Source: Section 211.031, RSMo.

Comment: This Rule provides only for transfer of supervision of the juvenile following the entry of a judgment of the juvenile court assuming jurisdiction over the juvenile. Interstate placement of juveniles for supervision is governed by Article VII of the Interstate Compact on Juveniles, Section 210.570 RSMo.

RULE 126. DISQUALIFICATION OF JUDGE

Rule

126.01 Change of Judge.

126.02 Powers and Duties of Special Judge.

126.01 Change of Judge

A change of judge of the juvenile court shall be ordered;

1. When the judge of the juvenile court is interested, related to a party, or otherwise disqualified under Rule 51.07; or

2. Upon application of an interested party under Rule 51.05, provided, that when one application has been made by a party other than the juvenile officer, no further application shall be permitted except an application by a party whose interest conflict with the interest of the party making the prior application.

Source: Rules 51.07, 51.06 (Effective September, 1973).

Comment: This Rule follows the holding of the *R. L. W. v. Billings*, 451 S.W.2d 125 (En Banc 1970), which held juvenile court proceedings are under the Rules of Civil Procedure for the purposes of disqualification of the juvenile court judge.

126.02 Powers and Duties of Special Judge

A judge sitting in the juvenile court in place of a disqualified judge shall, throughout the proceeding and until termination of the case, possess all the powers and perform all the duties of the regular judge. If it is found that the allegations of the petition have been established, further hearings in the case may be held at such place convenient to the parties within or without the circuit as the special judge may determine.

Source: Compare Civil Rule 51.15.

Comment: This Rule sets forth the customary powers of the judge who is called in to sit in the place of a judge who has been disqualified. Under this Rule, the adjudicatory phase of the proceeding shall be conducted within the county or city where venue lies under Section 211.031, but subsequent hearings, which may be numerous if it is found that the juvenile is within the jurisdiction of the juvenile court, may be conducted at a place convenient to the special judge and the parties.

RULE 127. JUVENILE COURT COMMISSIONERS

Rule

- 127.01 Qualifications and Appointment of Commission.
- 127.02 Functions and Powers of Commissioner.
- 127.03 Assignment of Cases to Commissioner.
- 127.04 Notice of Findings and Recommendations.
- 127.05 Request for Hearing by Judge.
- 127.06 Temporary Placement Pending Receipt of Request for Rehearing; Entry of Order.
- 127.07 Rejection or Modification of Findings and Recommendations.
- 127.08 Rehearing Before Commissioner.
- 127.09 Designation of Location of Hearings.

127.01 Qualifications and Appointment of Commission

a. The commissioner shall be appointed by a majority of the circuit court judges, en banc, to serve a term of four years.

b. The commissioner shall have the same qualifications as a circuit judge and shall conduct himself at all times befitting a member of the bench, shall devote full time to his duties as commissioner, and shall not engage in the private practice of law.

c. The commissioner may be removed from office during his term by a

majority of the circuit court judges, en banc, upon proof at a hearing before said judges of crime, misconduct, habitual drunkenness, willful neglect of duty, corruption in office, incompetency, or any offense involving moral turpitude or oppression in office, or unsatisfactory performance of duties.

Source: Section 211.023 RSMo, Missouri Constitution Art. VII, Section 1.

Comment: Section 211.023 RSMo authorizes the appointment of a commissioner by a majority of the circuit court judges, en banc, in each county of the first class and in the City of St. Louis.

The language of paragraph c is derived from Article VIII, Section 1 of the Constitution of Missouri, with the addition of the final phrase, "or unsatisfactory performance of duties."

127.02 Functions and Powers of Commissioner

The functions and powers of the commissioner shall be to hear and make findings and recommendations in such proceedings within the jurisdiction of the juvenile court as may be assigned to the commissioner by general or special order of the juvenile court. The commissioner shall have no administrative functions, unless such functions are assigned to him by the judge of the juvenile court.

Source: Compare Section 211.025, RSMo.

Comment: This Rule makes clear that the commissioner has only such authority as may be delegated or assigned to him by the judge of the juvenile court.

127.03 Assignment of Cases to Commissioner

The judge of the juvenile court may direct that detention hearings, informal hearings, hearings upon a petition and other proceedings under the Juvenile Code shall be heard in the first instance by the commissioner, on a case by case basis or by a general order directing the appropriate designated employee of the juvenile court to assign matters to the commissioner for hearing in accordance with a general plan established by the judge of the juvenile court or by any other appropriate method determined by the judge that tends to facilitate the operation of the juvenile court.

Source: Compare Section 211.025 RSMo: "The judge of the juvenile court may direct that any case shall be heard in the first instance by the commissioner in the manner provided for the hearing of cases by the court."

Comment: This Rule is intended to explain and implement the statutory language of Section 211.025 RSMo, and authorizes the adoption of a general procedure whereby cases of certain types may be assigned directly to the commissioner as a

matter of course.

127.04 Notice of Findings and Recommendations

a. In each case heard by the commissioner notice of the findings and recommendations of the commissioner, together with a statement of the right of rehearing, shall be given to the juvenile, the juvenile's custodian, and to any other person that the court may direct, in an appropriate manner directed by the judge of the juvenile court. Such notice shall be given in writing unless given to the parties in person at the hearing.

b. Upon the conclusion of the hearing in each case the commissioner shall transmit to the judge all papers relating to the case, together with his findings and recommendations in writing.

Source: Section 211.027 RSMo.

Comment: It would appear advisable in every case for the juvenile and his custodian to be given in writing a statement of the right of rehearing.

127.05 Motion for Rehearing — When Filed — Commissioner's Finding Final, When

The juvenile, his parents or custodian may, within fifteen days after receiving notice of the findings of the commissioner, file a motion for rehearing by a judge of the juvenile court. The judge shall promptly sustain or deny the motion and, if sustained, set a date for rehearing. If the motion is denied, the findings and recommendations of the commissioner shall become the decree of the court upon adoption by order of the judge.

Source: Section 211.029 RSMo.

127.06 Temporary Placement Pending Receipt of Request for Rehearing; Entry of Order

Upon receipt of the commissioner's findings and recommendations the judge of the juvenile court may make a temporary order in accordance with the recommendations of the commissioner by placing the juvenile in his home or in any other facility or institution authorized by Section 211.151 RSMo, pending the expiration of the time during which a request for rehearing may be made. If a request for rehearing is made, the temporary order may remain in effect until a rehearing is held by the court.

Source: New.

Comment: Under the decision of the Court of Appeals, St. Louis District, in *In re K _____ W _____ H _____*, 477 S.W.2d 433 (1972), the findings and recommendations of the commissioner cannot be adopted and confirmed by order of the judge until the expiration of the time during which a request for rehearing may be made. This Rule authorizes the

court to make a temporary order for placement of the juvenile pending the expiration of this period.

127.07 Rejection or Modification of Findings and Recommendations

The judge of the juvenile court may reject the findings and recommendations of the commissioner, or he may amend or modify the findings and recommendations provided the amendment or modification does not substantially affect the rights of the parties. If the commissioner's findings and recommendations are rejected, the parties shall have a hearing *de novo* before the judge. If the commissioner's findings and recommendations are amended or modified, notice thereof shall be given to the parties in the same manner provided for notice of the original findings and recommendations of the commissioner. The right of the parties to a hearing on such amended or modified commissioner's recommendations shall be the same as provided for the original findings and recommendations of the commissioner, and said amended or modified findings or recommendations shall become the decree of the court if no hearing before the judge is requested within ten days after the parties have received notice of the amendment or modification.

Source: New.

Comment: This Rule permits the judge of the juvenile court to reject, amend or modify the findings and recommendations of the commissioner even when no request for hearing has been made under Rule 127.05. It recognizes the power of the judge to deal with findings and recommendations which are to their face invalid, incomplete, or inconsistent, which power is inherent in Section 211.029 RSMo. Where rejection, modification or amendment occurs, the parties have a right to rehearing.

127.08 Rehearing Before Commissioner

Upon request of any party or upon his own motion, the judge of the juvenile court may in his discretion order a rehearing before the commissioner in any case, with such directions to the commissioner as the judge may deem appropriate. The findings and recommendations of the commissioner upon such rehearing shall be subject to the provisions of Rules 127.04 and 127.05 in the same manner as original findings and recommendations of the commissioner.

Source: New.

Comment: Where the findings and recommendations of the commissioner are incomplete or otherwise invalid, optimum use of judicial resources may dictate that the matter be returned to the commissioner for rehearing. This Rule authorizes the judge of the juvenile court to direct a rehearing of any matter

before the commissioner.

127.09 Designation of Location of Hearings

The judge of the juvenile court may designate by order the location within the geographical jurisdiction of the court where the commissioner shall conduct hearings.

Source: New.

Comment: This Rule provides authority for the judge of the juvenile court to designate a location other than the courthouse for the commissioner to hold hearings.

USE OF JUVENILE PROCEDURE FORM

The forms set forth in this Rule are recommended forms for use in the juvenile court. These forms or forms substantially similar may be used in juvenile court proceedings. The use of any form set forth in this Rule shall not be mandatory.

Source: New.

RULE 128. JUVENILE PROCEDURE FORMS PROMULGATED BY THE SUPREME COURT OF MISSOURI

Form

- 128.01 Order to Take Juvenile into Judicial Custody.
- 128.02 Authorization for Temporary Detention.
- 128.03 Notice to Judge That Juvenile Is in Detention.
- 128.04 Order for Detention of Juvenile.
- 128.05 Notice of Detention Hearing.
- 128.06 Notice Upon Admission to Detention Facility.
- 128.07 Notification by Law Enforcement Officer That Juvenile Was Taken Into Custody and Released.
- 128.08 Notice of Informal Adjustment Conference.
- 128.09 Notice of Termination of Informal Adjustment.
- 128.10 Juvenile Division Petition.
- 128.11 Circuit Court, Juvenile Division, Summons.
- 128.12 Waiver of Service of Summons By Custodian.
- 128.13 Juvenile Division Finding of Jurisdiction.
- 128.14 Circuit Court, Juvenile Division, Order of Disposition.
- 128.15 Court Order of Disposition Committing Juvenile to Custody of Division of Youth Services.
- 128.16 Commitment to Custody of Division of Youth Services.
- 128.17 Notice of Entry of Judgment.
- 128.18 Motion to Dismiss Petition to Allow Prosecution of Juvenile Under General Law — Traffic Violation.
- 128.19 Motion to Dismiss Petition to Allow Prosecution of Juvenile Under General Law — Felony.
- 128.20 Notice of Hearing on Motion to Dismiss Petition to Allow Prosecution of Juvenile Under General Law.
- 128.21 Order Dismissing Petition to Allow Prosecution Under General Law.
- 128.22 Motion to Modify Previous Order of Disposition.
- 128.23 Notice of Hearing Upon Motion to Modify Previous Order of Disposition.
- 128.24 Order Modifying Previous Order of Disposition.
- 128.25 Order Transferring Proceedings.
- 128.26 Order Transferring Supervision.
- 128.27 Order Terminating Jurisdiction.
- 128.28 Motion to Disqualify Judge.
- 128.29 Order to Destroy Records.

128.01 Order to Take Juvenile into Judicial Custody

State of Missouri)
)
County of _____) ss.

In The Circuit Court, Juvenile Division, of _____

**THE STATE OF MISSOURI TO ANY PEACE
OFFICER OR JUVENILE OFFICER IN THE STATE OF MISSOURI:**

You are hereby ordered to take into judicial custody _____

_____, a person subject to the jurisdiction of the
court, who is alleged to be within the jurisdiction of this court, for the reason
that: _____

_____ and to bring him forthwith before this court to be here dealt with in accordance
with law, and pending his appearance in this court he shall be detained in

_____ and you, the officer serving this order, shall forthwith make return hereof to
this court.

WITNESS THE HONORABLE _____,
Judge of said court and the seal thereof, issued in the county and state aforesaid
on this _____ day of _____, 19 _____.

Judge of the Circuit Court,
Juvenile Division

RETURN

Served the within order in my County of _____ and in the
State of Missouri on this _____ day of _____, 19 _____, by
taking the within named _____
into judicial custody and producing him before said court [delivering him into
detention as aforesaid] on the _____ day of _____, 19 _____.

128.02 Authorization for Temporary Detention

In the Circuit Court, Juvenile Division,
_____ County, Missouri

In the Interest of

_____ ,

Male/Female, Age _____

AUTHORIZATION FOR TEMPORARY DETENTION

Date: _____

Time: _____

_____, juvenile officer of _____

County, Missouri [supervisor of _____ County detention facility]

hereby authorizes the temporary detention of _____

in the authorized detention facility of the juvenile division at _____

for the reason that _____

Juvenile Officer [Supervisor]

Cross-Reference: Rule 111.06.b.

128.03 Notice to Judge That Juvenile is in Detention

NOTICE THAT JUVENILE IS IN DETENTION

To The Honorable _____, Judge of the

Circuit Court, Juvenile Division, of _____ County, Missouri:

_____, male/female, age _____,
a juvenile, was taken into custody at _____, Missouri,
at _____ o'clock _____ m. on the _____ day of _____,
19 _____, for the reason that _____

and is now being held in detention at the juvenile detention facility at _____
_____.

The juvenile's address is _____,
and the name and address of the juvenile's custodian is _____
_____.

Date: _____, 19 _____.

Juvenile Office/Detention Center
Supervisor

Cross-Reference: Rule 111.06c.

128.04 Order for Detention of Juvenile

In the Circuit Court, Juvenile Division,
_____ County, Missouri

In the Interest of _____)
_____)
_____) No. _____
_____)
MALE/FEMALE, Age _____)

ORDER OF DETENTION

Now on this _____ day of _____, 19 _____, appearing to
the court [based upon information furnished the court by the juvenile officer]
[after hearing the evidence offered in connection therewith at a detention
hearing held this day] that the detention of _____

_____ is required pending the hearing upon [a] petition [filed] [to be filed] in this cause, for the reason that _____

and it further appearing that said juvenile should be detained under the custody of this court at _____

THEREFORE it is ordered that _____ be detained at _____ pending further orders of the court.

Judge of the Circuit Court,
Juvenile Division

Cross-Reference: Rules 111.07a, 111.08.

Note on Use: When an order of detention is made, an entry thereof should be made in the minutes of the court.

128.05 Notice of Detention Hearing

In the Circuit Court, Juvenile Division,
of _____ County, Missouri

In the Interest of _____)
_____) No. _____
_____)
Male/Female, Age. _____)

NOTICE OF DETENTION HEARING

To _____, Juvenile
_____, Custodian

Notice is hereby given that on the _____ day of _____,
19____, at _____ o'clock _____ m., in the Courtroom of the Circuit Court,
Juvenile Division, of _____ County, Missouri, located at _____

_____, a hearing will be held to determine whether _____ should be continued in detention pending a hearing by the court upon the petition filed in his/her interest.

You are requested to attend this detention hearing and to present evidence concerning the necessity for continued detention of the juvenile. You have a right to be represented by an attorney at the hearing.

Judge of the Juvenile Division
Clerk of the Juvenile Division
Juvenile Officer

Cross-Reference: Rule 111.08.

Note on Use: Notice of the detention hearing should be served upon the juvenile and his custodian.

128.06 Notice Upon Admission to Detention Facility

NOTICE UPON ADMISSION TO DETENTION FACILITY

You are hereby notified that when a juvenile is admitted to a detention facility he has the following rights under the law:

1. The juvenile has the right to remain silent. This means that he does not have to answer any questions or make any statements unless he desires to do so. If he decides not to remain silent, he has the right to stop talking at any time.
2. The juvenile has the right to consult with and be represented by an attorney. An attorney may be requested at any time. If the juvenile wishes, he will be given the opportunity to telephone an attorney. If the juvenile is unable to hire an attorney, a court will appoint one to represent him without cost to the juvenile.
3. The juvenile has the right to a detention hearing before the court to determine whether detention is necessary. A detention hearing will be held within 3 days, excluding Saturdays, Sundays and legal holidays. At such hearing the juvenile may be represented by an attorney.
4. The juvenile may immediately make a telephone call to his custodian and his attorney. A juvenile may make further telephone calls to his custodian and his attorney at reasonable times.
5. The juvenile's custodian and his attorney may visit him. The first visit may be made at any time. After the first visit, his custodian may visit him during visiting hours, and his attorney may visit him at any reasonable time.
6. If the juvenile refuses to see his custodian, the custodian may visit

- him only if authorized by the juvenile judge or the juvenile officer.
7. No person other than a custodian, attorney, juvenile officer or member of the juvenile division staff may interview or question a juvenile in detention unless authorized by the juvenile judge or juvenile officer.
 8. If the juvenile is represented by an attorney, no person may interview or question a juvenile unless agreed to by the juvenile's attorney or unless his attorney is present.
 9. If the juvenile is fourteen years of age or older and has committed an act which would be a felony if committed by an adult or which is a violation of a traffic law, the court may permit the juvenile to be prosecuted as an adult. If such a case, anything he says to the police or others other than the juvenile officer or juvenile court personnel may be used against him in a criminal proceeding.

Cross-References: Rule 111.05, 111.10, 118.01.

128.07 Notification by Law Enforcement Officer That Juvenile Was Taken Into Custody and Released

NOTIFICATION THAT JUVENILE WAS TAKEN INTO CUSTODY AND RELEASED

_____, 19 ____

TO _____, juvenile officer of _____
County, Missouri:

_____, male/female, age _____,
a juvenile of _____, _____, Missouri,
was taken into custody by the undersigned at _____, Missouri,
at _____ o'clock _____ m. on the _____ day of _____,
19 _____, for the reason that _____

and was thereafter released to the juvenile's custodian, _____
_____, of _____,
_____, Missouri.

Cross-Reference: Rule 111.02d.

Note on Use: Whenever a juvenile is taken into custody and released without

being turned over to the juvenile officer, juvenile detention facility, or juvenile division, notice must be given in writing to the juvenile officer, stating the name and address of the juvenile and the reason he was taken into custody.

128.08 Notice of Informal Adjustment Conference
NOTICE OF INFORMAL ADJUSTMENT CONFERENCE

Date: _____

To: _____

Custodian of _____ :

You and the above-named juvenile are requested to appear for an informal adjustment conference before _____, juvenile officer of _____ County at _____ on _____, 19 ____, at _____ o'clock ____ m.

The purpose of the conference is to discuss _____

which is alleged to bring the juvenile, _____, within the jurisdiction of the juvenile division of the circuit court.

Attendance at this Conference is voluntary, however, your failure to attend may result in a petition being filed in the juvenile division. You and the juvenile may be represented by an attorney at the conference.

Juvenile Officer

Cross-Reference: Rule 113.02.

Note on Use: Rule 113.02 does not require written notice of an informal adjustment conference, but if such notice is given this form is suggested.

In the Interest of _____)
 _____)
 _____) No. _____
 Male/Female, Age _____)

PETITION

Now comes the juvenile officer of _____ County, Missouri, and states to the court:

1. This petition is filed in the interest of _____ , a juvenile born on _____, 19 _____, and who resides at _____ .

2. The name of the juvenile's father is _____ , who resides at _____ .
 The name of the juvenile's mother is _____ , who resides at _____ .
 The name of the juvenile's legal guardian [or] nearest known relative or spouse is _____ , who resides at _____ .

3. The juvenile is in the custody of _____ whose address is _____ .

4. The juvenile, _____ , is within _____ County, Missouri, and is in need of care and treatment because: _____

5. The juvenile, _____ , resides or was found to be in _____ County, Missouri, or
 The violation which the juvenile committed occurred in _____ County, Missouri.

6. The juvenile is in such condition or surroundings that his welfare requires that his custody be immediately assumed by the court, for the reason

that _____

The juvenile is (is not) now in detention.

WHEREFORE, petitioner prays that the court make and enter such judgment as the court shall find to be necessary in the interests of the juvenile.

Juvenile Officer of _____
County

Cross-Reference: Rule 114.01.

Note on Use: The petition should set out in detail and with particularity the facts constituting the basis for jurisdiction under Section 211.031, RSMo. The appropriate paragraph in 5 should be completed.

128.11 Circuit Court, Juvenile Division, Summons

IN THE CIRCUIT COURT, JUVENILE DIVISION

OF _____, MISSOURI

In the Interest of _____)
_____,) No. _____
Male/Female, Age _____)

SUMMONS

To _____:

You are hereby notified that a petition has been filed in the Circuit Court, Juvenile Division, of _____ County, Missouri, alleging that the above-named juvenile is subject to the jurisdiction of the court for the reasons set forth in the petition, a copy of which is attached hereto.

You are ordered to appear before this court at _____ on _____, the _____ day of _____, 19 _____, at _____ o'clock _____ m., for a hearing on the petition, and to have said juvenile with you then and there.

Witness my hand and the seal of said court this _____ day of _____, 19 _____.

Clerk of the Court

ORDER TO TAKE JUVENILE INTO CUSTODY

To the Person Serving This Summons:

You are hereby directed to take into your custody immediately the above-named juvenile, _____, and to deliver said juvenile without delay to the juvenile officer of _____ County, Missouri, so that the juvenile may be placed in detention at _____ pending further order of the court.

Witness my hand and the seal of this court this _____ day of _____, 19 _____.

Judge of the Circuit Court,
Juvenile Division

TO THE JUVENILE OR CUSTODIAN

You are to be present with the said juvenile at all hearings in this case, as your right to the custody and control of the juvenile will then be determined.

This summons must be served upon you at least twenty-four hours before the time set for the hearing, unless you have signed a waiver of service.

The hearing may be set over to a later time at your request, if the court finds you have a good reason for the request.

If at the first hearing the allegations in the petition are denied, the court may set this case for trial at a later date.

You have the following rights:

(1) The allegations in the petition are not assumed to be true, but must be proved by competent evidence presented to the court.

(2) You have the right to have an attorney present to assist you at all juvenile court hearings, or you may waive your right to an attorney. If you do desire to be represented by an attorney, you should begin now to obtain his services. If you cannot afford to pay an attorney and you wish to have an attorney to represent you, the court has the power to appoint an attorney to

represent you, without charge. However, in the event the court does appoint a public defender or other appointed counsel for the juvenile, the court may, after notice and hearing, order the custodian to make reimbursement for all or part of the cost of representation of the juvenile. You should make known to the court your desire to have an attorney appointed for you.

(3) When a petition is filed, the court is required to give you written notice of the date of hearing by summons, unless you have signed a waiver of service, in which case you may be notified by mail of the time and place of the hearing.

(4) If a statement or testimony is given by you, it may be used against you in court. You have the right to question any witness who appears at the hearing and to bring with you any witnesses. If you request, the court shall order persons to be present as your witnesses.

(5) At the end of the hearing when the court has reached a decision, you have the right to appeal the court's decision to a Missouri appellate court.

(6) If the juvenile is fourteen years or older and the petition alleges an offense which would be a traffic offense or which would be a felony if the juvenile were an adult, the court may conduct a hearing to determine whether the juvenile should be dealt with by the juvenile division, or whether he should be proceeded against as an adult, under the general law. If the juvenile is seventeen years or older and already under the jurisdiction of the juvenile division, and the petition alleges an offense which would be a violation of any criminal law or ordinance if the juvenile were an adult, the division may conduct such a hearing.

(7) If the division finds the facts in the petition to be true, it may make orders affecting the juvenile and his custodian concerning the care, custody and control of the juvenile, and the division may commit the juvenile to an institution.

RETURN OF SERVICE

I certify that I have duly executed this summons by serving a copy of the same upon _____ at _____,

Missouri, at _____ o'clock ____ m. the _____ day of _____
19, ____ .

[I certify further that on the _____ day of _____, 19 _____,
I did take into custody the above-named juvenile, _____
_____, and did deliver him/her to the juvenile officer
_____ County, Missouri.]

Cross-Reference: Rules 115.01, 115.02, 115.03.

Note on Use: If the court orders that the juvenile be taken into custody
immediately, or if the juvenile is already in detention, the last phrase of the
second paragraph of the summons should be stricken.

128.12 Waiver of Service of Summons By Custodian
IN THE CIRCUIT COURT, JUVENILE DIVISION
OF _____ COUNTY, MISSOURI

In the Interest of _____)
_____,) No. _____
Male/Female, Age ____ .)

WAIVER OF SERVICE OF SUMMONS BY CUSTODIAN

I, _____, hereby waive service of summons
as required by law in this cause, acknowledge receipt of a copy of the petition
which has been filed in the juvenile division herein, enter my appearance as a
party to this cause, and consent that a hearing be held by the division on the
_____ day of _____, 19 _____, at _____ o'clock
____ m., or any date and time to which the hearing may be continued by the
court. I further acknowledge that I have been informed of my right to be
represented by an attorney in this case.

Custodian

Cross-Reference: Rule 115.06.

Note on Use: Only the custodian of the juvenile may waive service of
summons. The juvenile may not waive service, nor may the custodian waive
service for the juvenile.

128.13 Juvenile Division Finding of Jurisdiction
IN THE CIRCUIT COURT, JUVENILE DIVISION

OF _____ COUNTY, MISSOURI

In the Interest of _____)
 _____)
 _____ ,) No. _____
 _____)
 Male/Female, Age ____ .)

FINDING OF JURISDICTION

Now on this _____ day of _____, 19 _____, there being present _____, juvenile officer of _____ County, and _____, attorney for the juvenile officer, and _____, the juvenile, _____ and _____, the juvenile's custodian, and _____, attorney for the juvenile, and testimony being heard and other evidence received by the court, the court finds that the allegations of the petition have been established, in that _____

_____ and that the court has jurisdiction over the juvenile pursuant to the provisions of Section 211.031 _____, (insert number of sub-paragraph) RSMo.

 Judge of the Circuit Court,
 Juvenile Division

Cross-Reference: Rule 119.02a(5), (7).

Note on Use: Rule 119.02a requires that the court, after receiving admissions or other sufficient evidence, to make a finding upon which it exercises its jurisdiction over the juvenile, or to dismiss the petition if the allegations thereof are not established. Preferably, this finding should not simply reiterate the allegations of the petition, but should state concisely the facts as found by the court. The finding will normally appear as an entry in the judge's minute book. Only when a finding of jurisdiction is made may the court receive evidence and make its determination concerning the disposition to be made in the case.

**128.14 Circuit Court, Juvenile Division,
Order of Disposition**

IN THE CIRCUIT COURT, JUVENILE DIVISION
OF _____ COUNTY, MISSOURI

In the Interest of _____)
_____,) No. _____
Male/Female, Age _____)

ORDER OF DISPOSITION

Now on this _____ day of _____, 19 _____, there being present _____, juvenile officer of _____ County and _____, attorney for the juvenile officer, and _____, the juvenile, _____ and _____, the juvenile's custodian, and _____, attorney for the juvenile, and the court after receiving evidence having found [on the _____ day of _____, 19 _____] that the allegations of the petition were established in that _____

and that therefore it had jurisdiction over the said juvenile, and the court having received further evidence concerning the need of said juvenile for care and treatment, and it being found that said juvenile is in need of care and treatment which can be furnished by placing him in the custody of his custodian in his own home under the supervision of the court,

IT IS ORDERED that said juvenile be placed in the custody of his custodian in his own home at _____, Missouri, under the supervision of this court until further order of the court, and that while under such supervision he shall be subject to the rules and supervision established by this court.

Judge of the Circuit Court,
Juvenile Division

Cross-Reference: Rules 119.02, 119.06.

**128.15 Court Order of Disposition Committing
Juvenile to Custody of Division of Youth Services**

IN THE CIRCUIT COURT, JUVENILE DIVISION

OF _____ COUNTY, MISSOURI

In the Interest of _____)
_____))
_____,) No. _____)
_____))
Male/Female, Age _____)

**ORDER OF DISPOSITION COMMITTING JUVENILE TO
CUSTODY OF DIVISION OF YOUTH SERVICES**

Now on this _____ day of _____, 19 _____, there being present _____, juvenile officer of _____ County and _____, attorney for the juvenile officer and _____, the juvenile, _____ and _____, the juvenile's custodian, and _____, attorney for the juvenile, and the court receiving evidence having found [on the _____ day of _____, 19 _____] that the allegations of the petition were established in that _____

_____ and that therefore it had jurisdiction over the said juvenile, and the court having received further evidence concerning the need of said juvenile for care and treatment, and it being found that said juvenile is in need of care and treatment which cannot be furnished by placing the juvenile in his own home, but which requires the care, custody and discipline of a facility of the division of youth services;

IT IS ORDERED that the said juvenile be committed to the custody of the

division of youth services, there to remain until discharged by law or until reaching the age of eighteen years, to be dealt with in all respects as provided by law, and that the said juvenile forthwith be delivered to the custody of the division of youth services.

Judge of the Circuit Court,
Juvenile Division

Cross-Reference: Rules 119.02, 119.06.

128.16 Commitment to Custody of Division of Youth Services

IN THE CIRCUIT COURT, JUVENILE DIVISION

OF _____ COUNTY, MISSOURI

In the Interest of _____)

)

_____,)

No. _____

)

Male Female, Age _____)

COMMITMENT TO CUSTODY OF DIVISION OF YOUTH SERVICES

The State of Missouri to _____,
juvenile officer of _____ County, Missouri:

WHEREAS, in a proceeding in the Circuit Court, Juvenile Division, of _____ County, Missouri, on the _____ day of _____, 19 _____, the court having inquired into the need for care and treatment of _____, a juvenile over whom the court had previously assumed jurisdiction, who was then and there present, and the court having found the said juvenile to be in need of training, school care, custody and discipline; and

WHEREAS, the court entered an order of disposition committing the said juvenile, _____, to the custody of the division of youth services, there to remain until discharged by law or until reaching the age of eighteen years:

THEREFORE, you are hereby commanded to take the said _____

and deliver _____ to the custody of the division of youth services, there to remain in compliance with said order of this court, and to make a return thereof to this court.

Judge of the Circuit Court
Juvenile Division

Cross-Reference: Section 211.231, RSMo.

128.17 Notice of Entry of Judgment
IN THE CIRCUIT COURT, JUVENILE DIVISION
OF _____ COUNTY, MISSOURI

In the Interest of _____)
)
) No. _____
)
Male Female, Age _____)

NOTICE OF ENTRY OF JUDGMENT

To _____ :

You are hereby notified that on the _____ day of _____, 19____, the Circuit Court, Juvenile Division, of _____ County, Missouri, made and entered the following judgment in this case:

You are further notified that you may have a right of appeal from this judgment under Rule 120.01, which provides:

- a. An appeal shall be allowed to the juvenile from any final judgment made under the Juvenile Code and may be taken on the part of the juvenile by the custodian.
- b. An appeal shall be allowed to a custodian from any final judgment made under the Juvenile Code which adversely affects him.

- c. Notice of appeal shall be filed within thirty days after entry of final judgment.
- d. Neither the filing of a notice of appeal nor the filing of any motion subsequent to the judgment shall act to stay the execution of a judgment unless the court enters an order staying execution.

Clerk of the Court

Cross-Reference: Rule 119.06b.

Note on Use: Rule 119.06b requires that the clerk of the court serve a copy of the court's judgment by mail upon every party affected thereby who was not present in court in person or by counsel at the time of the entry of the judgment.

**128.18 Motion to Dismiss Petition to Allow
Prosecution of Juvenile Under General Law
— Traffic Violation**

IN THE CIRCUIT COURT, JUVENILE DIVISION

OF _____ COUNTY, MISSOURI

In the Interest of _____)
 _____)
 _____)
 Male/Female, Age _____)

No. _____

**MOTION TO DISMISS PETITION TO ALLOW PROSECUTION OF
JUVENILE UNDER GENERAL LAW — TRAFFIC VIOLATION**

Now comes _____, juvenile officer of _____ County, Missouri, and moves that the court dismiss the petition heretofore filed in the case to allow the juvenile, _____, to be prosecuted under the general law for a violation of a state traffic law law [municipal traffic ordinance], and in support thereof states:

1. The petition filed in this case alleges that the said juvenile did on the _____ day of _____, 19____, at _____, Missouri, _____

2. The alleged acts by the juvenile, if committed by an adult, constitute a violation of a state traffic law [municipal traffic ordinance], to-wit Section _____, RSMo.

3. The said juvenile was at the time of the alleged acts over fourteen years of age, having been born on the _____ day of _____, 19 _____.

4. The said juvenile is not a proper subject to be dealt with under the provisions of the Juvenile Code, for the reason that _____

and that therefore said juvenile is beyond the rehabilitative care, treatment and services available to this court and cannot benefit further therefrom.

WHEREFORE, petitioner prays that the court receive the report of the investigation required by Section 211.071, RSMo, hear evidence, and find that the juvenile is not a proper subject to be dealt with under the provisions of the Juvenile Code, and thereupon order that the petition be dismissed and that said juvenile may be prosecuted under the general law for the aforesaid traffic violation.

Juvenile Officer of _____
County, Missouri

Cross-Reference: Rule 118.01.

Note on Use: The allegations in paragraphs 1 and 4 should be stated with definiteness and in sufficient detail to inform the juvenile and the court of the grounds for the motion.

**128.19 Motion to Dismiss Petition to Allow
Prosecution of Juvenile Under General Law
— Felony**

IN THE CIRCUIT COURT, JUVENILE DIVISION

OF _____ COUNTY, MISSOURI

In the Interest of)
)
_____,)
)
Male/Female, Age _____)

No. _____

**MOTION TO DISMISS PETITION TO ALLOW PROSECUTION
OF JUVENILE UNDER GENERAL LAW — FELONY**

Now comes _____, juvenile officer of _____ County, Missouri, and moves that the court dismiss the petition heretofore filed in this case to allow the juvenile, _____, to be prosecuted under the general law of this State for commission of a felony, and in support thereof states:

1. The petition filed in this cause alleges that the said juvenile did on the _____ day of _____, 19____, at _____, Missouri, _____

_____.

2. The alleged acts by the juvenile constitute an offense which would be a felony if committed by an adult, to-wit: _____

a violation of Section _____, RSMo.

3. The said juvenile was at the time of the alleged acts over fourteen years of age, having been born on the _____ day of _____, 19____.

4. The said juvenile is not a proper subject to be dealt with under the provisions of the Juvenile Code, for the reason that _____

_____, and that therefore said juvenile is beyond the rehabilitative care, treatment and services available to this court, and cannot benefit further therefrom.

WHEREFORE, petitioner prays that the court receive the report of the investigation required by Section 211.071, RSMo, hear evidence, and find that the juvenile is not a proper subject to be dealt with under the provisions of the Juvenile Code, and thereupon order that the petition be dismissed and that said juvenile may be prosecuted under the general law for the aforesaid felony.

Juvenile Officer of _____
County, Missouri

Cross-Reference: Rule 118.01.

Note on Use: The allegations in paragraphs 1 and 4 should be stated with definiteness and in sufficient detail to inform the juvenile and the court of the grounds for the motion.

**128.20 Notice of Hearing on Motion to Dismiss
Petition to Allow Prosecution of Juvenile
Under General Law**

IN THE CIRCUIT COURT, JUVENILE DIVISION
OF _____ COUNTY, MISSOURI

In the Interest of _____)
_____)
_____,) No. _____
_____)
Male/Female, Age _____)

**NOTICE OF HEARING ON MOTION TO DISMISS PETITION
TO ALLOW PROSECUTION OF JUVENILE UNDER GENERAL LAW**

Notice is hereby given that a motion has been filed in the Circuit Court, Juvenile Division, to dismiss the petition heretofore filed in the interest of _____, a juvenile, to allow said juvenile to be prosecuted under the general law. A copy of the motion to dismiss is attached hereto.

The court has ordered that a hearing be held on said motion to dismiss, on _____, the _____ day of _____, 19____, at _____, _____ m., at _____, Missouri.

The purpose of the hearing is to determine whether the juvenile is a proper subject to be dealt with under the provisions of the Juvenile Code, and if the Court finds that the juvenile is not a proper subject, the petition will be dismissed to allow prosecution of the juvenile under the general law.

You have the right to have an attorney present to assist you at the hearing, or you may waive your right to an attorney. If you do desire to be represented by an attorney, you should begin now to obtain his services. If you cannot afford

to pay an attorney and wish to have an attorney to represent you, the court has the power to appoint a public defender or other appointed counsel. The court may, after notice and hearing, order the custodian to make reimbursement for all or part of the cost of representation of the juvenile.

You have a right to question any witness who appears at the hearing and to bring with you any witness. If you request, the court will order persons to be present as your witnesses.

Judge/Clerk of the Court

Cross-Reference: Rule 118.02.

**128.21 Order Dismissing Petition to Allow
Prosecution Under General Law**

IN THE CIRCUIT COURT, JUVENILE DIVISION
OF _____ COUNTY, MISSOURI

In the Interest of _____)
)
)
_____,) No. _____
)
Male/Female, Age _____)

**ORDER DISMISSING PETITION TO ALLOW PROSECUTION
UNDER GENERAL LAW**

Now on this _____ day of _____, 19 _____, there being present _____, juvenile officer of _____ County, Missouri and _____, attorney for the juvenile officer, and _____, the juvenile, and _____ and _____, the juvenile's custodian, and _____, the attorney for the juvenile, and the court hearing the motion of the juvenile officer to dismiss the petition heretofore filed in the interest of the juvenile, to allow the juvenile to be prosecuted under the general law, and the court receiving testimony and other evidence upon said motion, and the report of the investigation required by Section 211.071, RSMo, and being fully advised in the premises, the court finds:

1. The petition filed in this cause alleges that the juvenile has committed an offense which would be a violation of a state traffic law/municipal traffic offense/felony if committed by an adult, to-wit:

a violation of Section _____ RSMo/Municipal Ordinance.

2. The juvenile is _____ years of age, having been born on the _____ day of _____, 19____, and the alleged offense was committed after the juvenile became fourteen years of age.

3. The juvenile is not a proper subject to be dealt with under the provisions of the Juvenile Code for the reasons that _____

WHEREFORE, it is ordered that the petition filed in this case be and the same is hereby dismissed, and that the juvenile may be prosecuted under the general law for the offense alleged in said petition.

Judge of the Circuit Court,
Juvenile Division

Cross-Reference: Rule 118.04.

Note on Use: The order dismissing the juvenile court petition must state the reasons for the decision. A copy of the order, together with the petition, must be sent to the prosecuting attorney.

128.22 Motion to Modify Previous Order of Disposition

IN THE CIRCUIT COURT, JUVENILE DIVISION

OF _____ COUNTY, MISSOURI

In the Interest of _____)

_____)

Male/Female, Age _____)

No. _____

**MOTION TO MODIFY PREVIOUS ORDER
OF DISPOSITION**

Now comes _____, juvenile officer of _____ County, Missouri, and moves that the court modify its previous order of disposition entered in this cause, and in support thereof states to the court:

1. On the _____ day of _____, 19 _____, the juvenile, _____, was found to be within the jurisdiction of the court, and the court [on the _____ day of _____, 19 _____] entered an order of disposition that _____

2. The aforesaid order of disposition should now be modified for the reason that _____

3. For the foregoing reason, this court should modify its previous dispositional order to provide that _____

WHEREFORE, petitioner prays that the court order that a hearing be held upon this motion, and that the court make and enter an order modifying its previous order of disposition in such manner as it shall find to be in the welfare of the juvenile and the best interests of the state.

Juvenile Officer of _____
County, Missouri

Cross-Reference: Rule 119.09.

Note on Use: A motion to modify a previous dispositional order may also be filed by the juvenile or the juvenile's custodian.

**128.23 Notice of Hearing Upon Motion to Modify
Previous Order of Disposition**

IN THE CIRCUIT COURT, JUVENILE DIVISION
OF _____ COUNTY, MISSOURI

In the Interest of _____)
_____,) No. _____
Male/Female, Age _____)

**NOTICE OF HEARING UPON MOTION TO MODIFY
PREVIOUS ORDER OF DISPOSITION**

To _____

You are hereby notified that a motion has been filed in this court by _____, juvenile officer of _____ County, Missouri, praying for a modification of the order of disposition heretofore entered by the court in the interest of _____, a juvenile, on the _____ day of _____, 19____, at _____ m., at _____, Missouri, to determine whether the order of disposition should be modified.

You are required to be present at the hearing and also have the juvenile present if the juvenile is in your custody.

You have a right to have an attorney present to assist you at the hearing, or you may waive your right to an attorney. If you do desire to be represented by an attorney, you should begin now to obtain his services. If you cannot afford to pay an attorney and wish to have an attorney to represent you, the court has the power to appoint an attorney to represent you, without charge. However, in the event the court does appoint a public defender or other appointed counsel, the court, may, after notice and hearing, order the custodian to make reimbursement for all or part of the cost of representation of the juvenile.

You have the right to question any witness who appears at the hearing and to bring with you any witnesses. If you request, the court will order persons to be present as your witnesses.

Judge/Clerk of the Court

Cross-Reference: Rule 119.09.

128.24 Order Modifying Previous Order of Disposition

IN THE CIRCUIT COURT, JUVENILE DIVISION

OF _____ COUNTY, MISSOURI

In the Interest of _____)
_____,) No. _____
Male/Female, Age _____)

ORDER MODIFYING PREVIOUS ORDER OF DISPOSITION

Now on this _____ day of _____, 19____, there being present _____, juvenile officer of _____ County and _____, attorney for the juvenile officer, and _____, the juvenile, _____ and _____, the juvenile's custodian, and _____ attorney for the juvenile, and the court hearing the motion of _____ to modify the previous order of disposition made and entered by the court on the _____ day of _____, 19____, and the court receiving testimony and other evidence upon said motion and being fully advised in the premises, the court finds said order of disposition should be modified for the reason that _____

WHEREFORE, it is ordered that the order of disposition in this cause be, and the same is modified to provide that _____

Judge of the Circuit Court,
Juvenile Division

Cross-Reference: Rule 119.09.

128.25 Order Transferring Proceedings

IN THE CIRCUIT COURT, JUVENILE DIVISION

OF _____ COUNTY, MISSOURI

In the Interest of _____)
_____,) No. _____
Male/Female, Age _____)

ORDER TRANSFERRING PROCEEDINGS

Now on this _____ day of _____, 19____, the motion of _____, juvenile officer of _____ County, Missouri, for an order transferring this proceeding concerning _____, a juvenile, from this court to the Circuit Court, Juvenile Division of _____ County, Missouri, being presented to the court and evidence received thereupon and it appearing to the court that the welfare of the juvenile and the best interests of the state be served by said transfer of this proceeding;

IT IS ORDERED that the proceedings concerning _____, _____, juvenile, be transferred to and placed with the Circuit Court, Juvenile Division, of _____ County, Missouri, and that the juvenile officer and the clerk of this court shall furnish to the Circuit Court, Juvenile Division, of _____ County, Missouri, such records and other information concerning the juvenile as shall be requested by said court.

Judge of the Circuit Court
Juvenile Division

Cross-Reference: Rule 125.01.1.

128.26 Order Transferring Supervision

IN THE CIRCUIT COURT, JUVENILE DIVISION

OF _____ COUNTY, MISSOURI

In the Interest of _____)
 _____)
 _____) No. _____
 Male/Female, Age _____)

ORDER TRANSFERRING SUPERVISION

Now on this _____ day of _____, 19 _____, the motion of _____, juvenile officer of _____ County, Missouri, for an order transferring supervision of _____, a juvenile over whom this court has jurisdiction under the Juvenile Code, Chapter 211, RSMo, from this court to the Circuit Court, Juvenile Division, of _____ County, Missouri, being presented to the court and evidence received thereupon, and it appearing to the court that the welfare of the juvenile and the best interests of the state would be served by said transfer of supervision, and that the Circuit Court, Juvenile Division, of _____ County, Missouri, has consented to assume supervision of the juvenile;

IT IS ORDERED that the supervision of _____, a juvenile, be transferred to and placed with the Circuit Court, Juvenile Division of _____ County, Missouri, and that the juvenile officer and the clerk of this court shall furnish to the Circuit Court, Juvenile Division, of _____ County, Missouri, such records and other information concerning the juvenile as shall be requested by said court.

 Judge of the Circuit Court,
 Juvenile Division

Cross-Reference: Rule 125.01.

128.27 Order Terminating Jurisdiction
IN THE CIRCUIT COURT, JUVENILE DIVISION
OF _____ COUNTY, MISSOURI

In the Interest of _____)
 _____) No. _____)
 MALE/FEMALE, Age _____)

ORDER TERMINATING JURISDICTION

Now on this _____ day of _____, 19 _____, it being found by the court that _____, a juvenile, had reached the age of _____, and is no longer in need of the care and treatment which this court may provide,

IT IS ORDERED that the jurisdiction of this court over _____ be terminated, and that _____ be discharged from further supervision by this court.

 Judge of the Circuit Court,
 Juvenile Division

Cross-Reference: Rule 119.09.

128.28 Motion to Disqualify Judge

In the Circuit Court, Juvenile Division,
 _____ County, Missouri

In the Interest of _____)
 _____) No. _____)
 MALE/FEMALE, Age _____)

APPLICATION FOR CHANGE OF JUDGE

Now comes _____, and applies to the court for a change of judge in this cause pursuant to Supreme Court Rule 51.05.

Dated: _____

CERTIFICATE OF SERVICE

I certify that on this _____ day of _____, 19 _____, I did

serve by regular mail upon _____, and _____, being all other parties to this cause, a copy of the foregoing application together with notice that the application would be presented to the court on the _____ day of _____, 19 _____.

Cross-Reference: Rule 126.01.

Note on Use: Rule 51.05 provides that an application for change of judge need not allege or prove any cause for the change of judge. The application must be filed at least thirty days before the trial date or within five days after a trial setting has been made, whichever date is later.

128.29 Order the Destroy Records

In the Circuit Court, Juvenile Division,
_____ County, Missouri

In the Interest of _____)
_____)
_____) No. _____)
MALE/FEMALE, Age _____)

ORDER TO DESTROY RECORDS

Now on this _____ day of _____, 19 _____, there being presented to the court the application of _____, juvenile officer of _____ County, to seal the official court file and law enforcement officers' records and to destroy all social histories, records and information relating to _____, juvenile, and it appearing to the Court that _____, juvenile, has reached his seventeenth birthday, that the jurisdiction of this court over _____ has been terminated, and that it is in the best interest of _____ that such action be taken;

IT IS ORDERED that the official court file and law enforcement officers' records of _____, juvenile, be sealed and that

all social histories, records and information in the custody or possession of the court relating to _____ , juvenile, be destroyed.

Judge of the Circuit Court,
Juvenile Division

Cross-Reference: Rule 122.04.

Additional copies of these Rules may be obtained upon request to:

MISSOURI JUVENILE JUSTICE ASSOCIATION
P.O. BOX 1332
JEFFERSON CITY, MISSOURI 65102
PHONE: (314) 636-6101