

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1966**

In the Matter of the Welfare of: M. V. R., Child.

**Filed August 5, 2024
Affirmed
Larkin, Judge**

Rice County District Court
File No. 66-JV-23-1849

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Brian M. Mortenson, Rice County Attorney, Sean R. McCarthy, Assistant County Attorney, Faribault, Minnesota (for appellant state)

Anders J. Erickson, Johnson Erickson Criminal Defense, Minneapolis, Minnesota (for respondent M.V.R.)

Considered and decided by Bratvold, Presiding Judge; Larkin, Judge; and Jesson, Judge.*

NONPRECEDENTIAL OPINION

LARKIN, Judge

The state received a report that a 16-year-old boy had intercourse with a 13-year-old girl. There was no allegation of force, coercion, or bodily harm. The state promptly investigated the allegation, but it did not file a charge against the boy in juvenile court until nearly two years later, after he had turned 18. The state requested presumptive certification

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

for prosecution in adult court, asserting that the presumptive sentence for the offense on conviction in adult court would be an executed term of imprisonment. The juvenile court dismissed the charge under Minn. R. Juv. Delinq. P. 6.08, which authorizes the court to dismiss a petition based on unnecessary prosecutorial delay in bringing the respondent to trial. Because the juvenile court did not abuse its discretion in doing so, we affirm.

FACTS

On June 26, 2023, appellant State of Minnesota filed a juvenile petition charging respondent MVR with one count of third-degree criminal sexual conduct. The juvenile petition set forth the following allegations as a basis for the charge:

On or about July 8, 2021, Detective Carstensen of the Faribault Police Department received a report that an unknown 16-year-old male from Albert Lea snuck into the bedroom of 13-year-old JUVENILE VICTIM . . . and engaged in sexual intercourse with her on the night of July 8, 2021. JUVENILE VICTIM lives in the City of Faribault, County of Rice, and allegedly met the male, later identified as [MVR] (DOB: 11/06/2004), on Snapchat.

On July 9, 2021, Det. Carstensen met with JUVENILE VICTIM and her mother at the Faribault Police Department. Det. Carstensen spoke with JUVENILE VICTIM privately in an interview room. JUVENILE VICTIM made the following statements:

- I'm here because of that guy. His name is [M]. He is from Albert Lea.
- [M] wanted to come over to my house. I thought he was joking.
- He came over. This was two days ago.
- [M] is 16. I know [M] from Snapchat. I saw him on someone's story and I added him.

- We started talking on Wednesday. He asked me what I looked like and if he could come over. At first I said I didn't know.
- He came over at 3:30 in the morning.
- I am 13. I know [M] is for sure 16 because he can drive. I told him I was 13 and going to be 14 soon.
- [M] didn't give me a reason for why he wanted to come over. We didn't really talk about it before he came over. He said he was going to come over and hang out.
- He got in my house through my window. He told me he drove to my house.
- Right away we were just lying in my bed watching a movie. He made the first move, I told him he could.
- He had everything off (clothing). I had a t-shirt and bra on. I had my pants off.
- We did it once and then we stopped. We did it again and then he had to go.
- "Did it" means having sex.
- It was in there. His [penis] was in my vagina.
- He did not have a condom on. . . .
- The first time lasted 10 minutes maybe. The second time was 15.
- Something came out of his penis after the first time. It was white.
- I gave him a towel to clean it up with. When it came out it went on the towel.
- The second time he just had to go, nothing came out.

. . . .

- The towel was a clean towel from my laundry basket. It was blue and still at my house. I did not wash it.
- His name in Snapchat is saved as [M].

. . . .

- [M] is my height with brown hair.
- He left at about 4:40 a.m.
- The blue towel is on my floor somewhere.

JUVENILE VICTIM showed Det. Carstensen her phone and Snapchat account to confirm [M's] identity. Det. Carstensen observed a profile by the name of [MN] in the chat feature. JUVENILE VICTIM confirmed this was the male she had sex with. JUVENILE VICTIM also told Det. Carstensen that she had [M] on her Instagram and showed her a profile with a username of [m.n.]. Det. Carstensen observed a photo on the account depicting [M] sitting on the trunk of a black vehicle with Minnesota license plate . . . , which registered to a [MLJ] of Albert Lea, MN.

Det. Carstensen observed JUVENILE VICTIM had a photograph of herself on her phone that was captioned "lost the v card" that was time-stamped Thursday (7/8/21) at 4:46 a.m. Det. Carstensen observed a Snapchat message conversation between JUVENILE VICTIM and another user, in which JUVENILE VICTIM talked about how she didn't want to live because she "did something bad," and continued by saying she had sex with someone and talked about how it was the first time she had met him.

Det. Carstensen collected the following as evidence from JUVENILE VICTIM's residence: sweatshirt, blue towel, dark blue towel, black bed sheet, bedding/comforter.

JUVENILE VICTIM was seen at the District One Hospital Emergency Room for a [sexual-assault] examination. The sexual assault and urine kits collected at District One

Hospital along with the blue towel collected from the residence were sent to the Minnesota Bureau of Criminal Apprehension (BCA) for further testing.

Det. Carstensen performed an internet search for [MN] in Albert Lea, MN, and was able to positively identify [MVR] and his mother, [EN]. Det. Carstensen also located an in-house record for [MVR] indicating Faribault Police Officers had contact with [MVR] on July 9, 2021 at Teepee Tonka Park at 2:06 a.m., at which time he was located in the park after hours with a different juvenile female and cited for curfew violation. [MVR] provided Faribault Officers on scene information for his parents [N] and [J] (registered owner of the vehicle in Instagram photograph).

On or about May 25, 2022, a search warrant was executed for [MVR's] DNA. A buccal swab of [MVR's] DNA was sent to the BCA for testing.

On or about November 22, 2022, the BCA issued a report confirming that semen from the blue towel collected from JUVENILE VICTIM's residence was a match to [MVR's] DNA.

At the time of this incident, JUVENILE VICTIM was 13 years old and [MVR] was 16 years old and 34 months older than JUVENILE VICTIM.

On September 22, 2023, over two years after the incident was reported to the police, the state moved for presumptive certification, seeking to prosecute respondent as an adult and imposition of an executed prison sentence.

Respondent moved the juvenile court to dismiss the charge based on "unnecessary delay in investigation, charging, and other matters." He cited three grounds for a delay-based dismissal: (1) Minn. R. Juv. Delinq. P. 6.08, which authorizes dismissal based on unnecessary delay in bringing a respondent to trial, (2) due process, and (3) the interests of justice.

On October 13, 2023, the juvenile court held a hearing on respondent's motion to dismiss. The juvenile court heard testimony from respondent and his mother regarding his history of epilepsy, seizures, anxiety, learning difficulties during COVID, and the denial of his application to college. Respondent and his mother also testified that respondent appealed the denial, was accepted to college, and moved into a dormitory. However, once respondent learned that the underlying charge had been filed, he was anxious, dropped out of college, and returned home.

On December 4, 2023, the juvenile court dismissed the charge against respondent based on Minn. R. Juv. Delinq. P. 6.08. The juvenile court reasoned that the charging delay in this case was unnecessary and that respondent had been prejudiced by the delay in two ways: (1) the available juvenile dispositional options had been "extremely limited" as a result of respondent aging out of the juvenile system during the delay and (2) respondent had suffered physical, mental-health, and educational setbacks as a result of the charging delay.

The state appeals.

DECISION

The state may appeal a pretrial order only if the order has a "critical impact" on its ability to prosecute. *See In re Welfare of L.E.P.*, 594 N.W.2d 163, 168 (Minn. 1999) ("In the absence of critical impact we will not review a pretrial order."). Because the juvenile court dismissed the charge against respondent, the critical-impact standard is satisfied. *See State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (stating that critical impact is present if suppression of evidence leads to dismissal of charge).

I.

The state contends that the juvenile court erred in dismissing the charge against respondent, arguing that the court “abused its discretion by misapplying the law.”

The juvenile court dismissed the charge under Minn. R. Juv. Delinq. P. 6.08, which simply states: “If there is unnecessary delay by the prosecution in bringing a respondent to trial, the court may dismiss the petition, citation or indictment.”¹ Because rule 6.08 uses “may,” it gives the juvenile court discretion to dismiss a juvenile charging document. See *State v. Gowan*, 214 N.W.2d 228, 231 (Minn. 1973) (noting that “may” is “discretionary in nature”). We therefore review the dismissal for an abuse of discretion. A court “abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record.” *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022) (quotation omitted).

Unnecessary Delay

A dismissal under rule 6.08 requires “unnecessary delay.” The parties do not dispute the meaning of that phrase. The term “unnecessary” is commonly understood to mean “needless.” See ; *Suleski v. Rupe*, 855 N.W.2d 330, 335 (Minn. App. 2014) (applying the dictionary definition and common meaning of the term “primary residence” in a family-law dispute where the term was not defined in statute).

The juvenile court determined that the charging delay in this case was unnecessary. The following dates are undisputed and relevant to that determination.

- On July 8, 2021, the alleged offense occurred and was reported to the police.

¹ The state does not contest that rule 6.08 applies to pre-charging delay.

- On July 9, 2021, an investigator interviewed the complaining witness.
- On July 12, 2021, law enforcement received a report regarding the complaining witness's sexual-assault examination and analyzed the complaining witness's cell phone.
- On July 15, 2021, law enforcement received surveillance footage of the complaining witness's residence.
- On July 19, 2021, respondent did not attend a scheduled interview with law enforcement; respondent's mother indicated respondent would not participate in a police interview.
- On December 19, 2021, the BCA completed a report regarding the toxicology results of a urine sample submitted by law enforcement.
- On March 31, 2022, the BCA completed a report regarding its examination of physical evidence submitted by law enforcement, indicating that DNA extraction and quantitation had been performed on various items, would be performed on one additional item, and requesting a DNA sample from respondent.
- On May 24, 2022, law enforcement obtained a search warrant authorizing the collection of a DNA sample from respondent.
- On May 25, 2022, law enforcement executed the warrant and obtained a DNA sample from respondent.
- On November 6, 2022, respondent turned 18 years old.
- On November 22, 2022, the BCA completed a report indicating that the DNA profile of sperm cell fractions obtained from physical evidence matched respondent's DNA.
- On June 26, 2023, the state filed a juvenile delinquency petition charging respondent with third-degree criminal sexual conduct.
- On September 22, 2023, the state filed a motion to prosecute respondent as an adult.

As to its determination that the charging delay was unnecessary, the juvenile court explained:

Not only is there no explanation on why evidence collected on December 19, 2021, and having *created* a report on November 22, 2022 was not charged until June 26, 2023, nor any explanation on why this evidence was necessary given the specific facts of this case. The [s]tate sets forth a timeline from the incident, the investigative procedures, and the results. All of these alleged events occurred post-COVID. The first report of the incident came in on July 12, 2021. What is clear is that a significant amount of time passed after investigation was completed that left this matter in limbo *prior* to being charged out on June 26, 2023.

The juvenile court noted that “the state has not put forth any explanation as to the necessity behind the delay that stretched for approximately seven months after the BCA’s provision of the DNA report in November 2022.” The record supports that observation. Instead of explaining the charging delay to the juvenile court, the state argued that “[t]he standard for dismissal for unnecessary delay requires [respondent] to establish substantial prejudice and improper state motive” and that because respondent failed to meet this burden, the “[c]ourt must deny [his] motion.” The state also argued that the delay was within its discretion.

The state has not changed its approach on appeal to this court and does not explain why the delay was necessary. Instead, it reiterates its insistence that dismissal was improper absent a showing of substantial prejudice and improper motive, and it relies on its charging discretion, stating that although the BCA provided a report regarding the DNA testing in November 2022, “The [s]tate, in its discretion, did not file the petition charging [r]espondent with the offense until June 2023.”

On this record, we discern no basis to reverse the juvenile court's determination that the charging delay in this case was unnecessary, that is, needless. It is supported by the undisputed facts in the record. As respondent notes, "the undisputed evidence establish[ed] a nearly two-year total delay in charging," including a "seven-month delay in filing the charge following the completion of the investigation," and the state fails "to even attempt to provide a justification as to why the delay took place."

Prejudice Requirement

Instead of explaining why the charging delay was necessary, the state contends that a dismissal under rule 6.08 requires a showing of prejudice and improper motive and that the juvenile court erred in finding prejudice sufficient to justify dismissal. The state argues that Minn. R. Juv. Delinq. P. 6.08 must be read and applied consistently with a corresponding rule of criminal procedure, Minn. R. Crim. P. 30.02, on which rule 6.08 was based. *See Report and Proposed Amendments to the Minnesota Rules of Juvenile Delinquency Procedure*, No. CX-01-926 (Minn. May 10, 2010) (explaining that the rules committee "discussed and approved" adding rule 6.08 "to provide for a dismissal procedure similar to that in the Rules of Criminal Procedure").

Rule 30.02 provides: "The court may dismiss the complaint, indictment, or tab charge if the prosecutor has unnecessarily delayed bringing the defendant to trial." In *State v. Banks*, this court held that rule 30.02 "applies to claims of pre-charge delay" and that to obtain a dismissal under rule 30.02 based on a claim of unnecessary pre-charge delay, "a defendant must demonstrate that he has suffered prejudice by the delay." 875 N.W.2d 338,

341 (Minn. App. 2016), *rev. granted* (Minn. Apr. 19, 2016) *and ord. granting rev. vacated* (Minn. Sept. 28, 2016).

The state argues that the juvenile court erred by dismissing in the absence of a showing of prejudice as required under *Banks*. Respondent counters: (1) the plain language of rule 6.08 does not require a showing of prejudice, (2) there is no caselaw requiring a showing of prejudice when applying rule 6.08, and (3) an interpretation of a corresponding rule of criminal procedure is irrelevant. Respondent argues that “a district court is not required to find prejudice prior to dismissing a petition because of unnecessary delay under [r]ule 6.08” and that even if a showing of prejudice is required, the juvenile court correctly determined that respondent had been prejudiced by the unnecessary charging delay.

The parties’ arguments raise an issue regarding the meaning of rule 6.08. The Minnesota Supreme Court recently explained how to interpret a rule of juvenile delinquency procedure in *In re Welfare of D.J.F.-D.*:

We interpret procedural rules de novo. Our interpretation must comply with the rules of grammar and give words and phrases their common and approved usage. If the rule’s meaning is plain and unambiguous, we must interpret the rule in accordance with its plain language. A rule is ambiguous if it is subject to more than one reasonable interpretation.

3 N.W.3d 266, 271 (Minn. 2024) (quotations and citations omitted).

The juvenile rule at issue in *D.J.F.-D.* was Minn. R. Juv. Delinq. P. 20.01, subd. 7(A), which governs dismissal of a juvenile proceeding when a child is found incompetent to proceed. *Id.* at 267-68. The supreme court declined to read that juvenile rule in the

context of a corresponding rule for adult criminal defendants, upon which the juvenile rule was based, explaining, “Because different policy interests inform the rules of juvenile delinquency procedure on the one hand, and the rules of criminal procedure on the other, we decline to read [r]ule 20.01 in light of the criminal rules.” *Id.* at 275 (citing Minn. R. Juv. Delinq. P. 1.02).

In *D.J.F.-D.*, the supreme court announced its interpretation of Minn. R. Juv. Delinq. P. 20.01, subd. 7(A), which is not relevant here. *Id.* at 278. But the supreme court also directed the Juvenile Rules Advisory Committee to propose amendments to rule 20.01, subdivision 7(A), “that will promote clear, consistent practice and procedures in these juvenile court cases.” *Id.* Significantly, the supreme court stated that the rules committee “is not, however required to propose amendments to [r]ule 20.01 that reflect our present interpretation if it concludes that other amendments would best serve the applicable policy interests, including, but not limited to, those mentioned above.” *Id.*

The supreme court’s approach in *D.J.F.-D.* recognizes the unique policy interests that underlie the juvenile system as compared to the adult criminal system. And the supreme court’s deference to the juvenile-rules committee on issues of policy was significant: the supreme court did not direct the committee to propose amendments that reflect its interpretation of rule 20.01. Instead, it invited the committee to propose other amendments that would best serve the applicable policy interests.

The supreme court’s approach in *D.J.F.-D.* influences our decision here. As explained in the next section, even if we assume, without deciding, that rule 6.08 requires a showing of prejudice, the juvenile court did not abuse its discretion in concluding that

the showing of prejudice in this case was sufficient. Thus, we need not determine whether a dismissal under rule 6.08 requires a showing of prejudice. Instead, we limit our analysis to whether the prejudice on which the juvenile court relied was sufficient under rule 6.08 given the facts and circumstances of this case, assuming, without deciding, that prejudice is required. This approach will give the Juvenile Rules Advisory Committee an opportunity to consider, in the first instance, whether a showing of prejudice is required under rule 6.08, consistent with the preference shown in *D.J.F.-D.* See *id.*

II.

The state contends that, assuming that a showing of prejudice is required under 6.08, the juvenile court erred by determining that respondent had demonstrated sufficient prejudice to obtain relief under rule 6.08. The state argues that the juvenile court “made no proper finding of prejudice in this case, and instead improperly relied upon potential sentencing concerns and [r]espondent’s subjective feelings of anxiety over the possibility of facing charges.”

The juvenile court essentially relied on two types of prejudice: dispositional (i.e., reduced time for treatment in the juvenile system) and personal (i.e., physical, mental-health, and educational). We address only the first type of prejudice because, to the extent that a finding of prejudice was required, the dispositional prejudice in this case justified dismissal under rule 6.08.

“Sentencing” Concerns

The state argues that the juvenile court “improperly relied upon potential sentencing concerns.” The state is incorrect. The juvenile court did not rely on any “sentencing”

concerns. The juvenile court relied on the “extremely limited dispositions based upon the extreme delay thereby prejudicing [respondent] in this matter.”

The state uses the words “sentence” and “disposition” interchangeably. That approach is fundamentally flawed.² A “sentence” is governed by statute and the Minnesota Sentencing Guidelines. Upon conviction of a felony, the district court may sentence the defendant to a term of imprisonment, payment of a fine, payment of court-ordered restitution, and payment of a local correctional fee. Minn. Stat. § 609.10, subd. 1 (2022) (listing available sentences for felony convictions). Presumptive sentences are set forth in the Minnesota Sentencing Guidelines, the purpose of which is to “establish rational and consistent sentencing standards which reduce sentencing disparity and ensure that sanctions following conviction of a felony are proportional to the severity of the offense of conviction and the extent of the offender’s criminal history.” *State v. Barthman*, 938 N.W.2d 257, 269-70 (Minn. 2020) (quotation omitted).

The purpose of guidelines sentencing in the adult criminal system is very different than the purpose of dispositional planning in the juvenile-justice system.

The purpose of the laws relating to children alleged or adjudicated to be delinquent is to promote the public safety and reduce juvenile delinquency by maintaining the integrity of the substantive law prohibiting certain behavior and by developing individual responsibility for lawful behavior. This purpose

² We recognize that term “disposition” is used in the adult criminal system when referring to sentencing outcomes, such as whether a presumptive prison sentence is stayed or executed. See Minn. Sent’g Guidelines 2.D.1. (2020) (“The court may depart from the presumptive disposition or duration provided in the Guidelines, and stay or impose a sentence that is deemed to be more appropriate than the presumptive sentence.”). Our discussion of the term “disposition” refers to the meaning of that word in the juvenile-justice context.

should be pursued through means that are fair and just, that recognize the unique characteristics and needs of children, and that give children access to opportunities for personal and social growth.

Minn. Stat. § 260B.001, subd. 2 (2022). “The laws relating to juvenile courts shall be liberally construed to carry out [that] purpose.” *Id.*, subd. 3 (2022); *see*, Minn. R. Juv. Delinq. P. 1.02 (using the same language as Minn. Stat. § 260B.001, subd. 2).

Consistent with the pursuit of the purpose of the juvenile-justice system “through means that are fair and just, that recognize the unique characteristics and needs of children, and that give children access to opportunities for personal and social growth,” Minnesota Statutes section 260B.198 (2022) authorizes multiple dispositional options to address the needs of a juvenile who has violated a criminal law. *See* Minn. Stat. § 260B.198, subd. 1(a) (setting forth dispositional options such as counseling the juvenile or transferring custody of the juvenile for out-of-home placement).

In addition, the procedural rules governing juvenile dispositions direct the consideration of the following “established principles”:

(1) Necessity. It is arbitrary and unjust to impose a disposition that is not necessary to restore law abiding conduct. . . .

(2) Best Interests. A disposition must serve the best interests of the child, but this does not supersede the requirement that the disposition be necessary. The promise of benefits in a disposition, or even the suggestion that a particular disposition is best for the child, does not permit a disposition that is not necessary.

(3) Out-of-Home Placement. Public policy mandates that the best interests of the child are normally served by parental custody. Where an out-of-home placement is being considered, the placement should be suitable to the child’s

needs. A placement that is not suited to the actual needs of the child cannot serve the child's best interests.

(4) Sanctions. Sanctions, such as post-adjudication placement in a secure facility, are appropriate where such measures are necessary to promote public safety and reduce juvenile delinquency, provided that the sanctions are fair and just, recognize the unique characteristics and needs of the child and give the child access to opportunities for personal and social growth. . . .

(5) Local Dispositional Criteria. The disposition should reflect the criteria used for determining delinquency dispositions in the local judicial district.

Minn. R. Juv. Delinq. P. 15.05, subd. 2(B).

In sum, a “sentence” is not the equivalent of a “disposition.” They are separate and distinct. See Minn. Stat. § 260B.130, subd. 4(a) (2022) (stating that if an extended jurisdiction juvenile prosecution results in a guilty plea or finding of guilt, the court shall “impose one or more juvenile dispositions” and “an adult criminal sentence”). Recognizing that distinction is important in this juvenile proceeding, and the distinction is supported by policy interests different than those underlying the adult criminal system. *D.J.F.-D.*, 3 N.W.3d at 275 (stating that “different policy interests inform the rules of juvenile delinquency procedure on the one hand, and the rules of criminal procedure on the other”).

Dispositional Prejudice

Turning to the juvenile court's reliance on dispositional prejudice, such prejudice is obvious when one considers the impact of the state's unnecessary charging delay in the context of its request for presumptive certification. Minnesota's laws and procedures governing the prosecution of juvenile crime have evolved over time and currently provide

three options for such prosecutions: delinquency prosecution, extended-jurisdiction-juvenile (EJJ) prosecution, and criminal prosecution, that is, certification of a charge against a juvenile for prosecution under the laws and procedures governing crimes committed by an adult. *See State v. Thompson*, 995 N.W.2d 415, 419-20 (Minn. App. 2023). Each of those options results in radically different outcomes if the offender is found guilty. We recently summarized those options as follows:

The district court has original jurisdiction in all civil and criminal cases. However, [Minnesota statutes] carve out a narrow category of cases from the subject matter jurisdiction of district courts and vest that jurisdiction exclusively in the juvenile court. Except as provided in sections 260B.125 (governing certification) and 260B.225 (governing traffic offenses), the juvenile court has original and exclusive jurisdiction in proceedings concerning any child who is alleged to be delinquent. . . .

. . . .

Unless terminated by the juvenile court and under certain circumstances discussed below, the jurisdiction of the juvenile court shall continue until the individual becomes 19 years of age if the court determines it is in the best interest of the individual to do so.

However, if an offender is convicted as an extended jurisdiction juvenile (EJJ), the juvenile court's jurisdiction may extend until the offender becomes 21 years of age. . . . If an EJJ prosecution results in a finding of guilt, the court shall impose both a juvenile disposition and a stayed adult criminal sentence.

The juvenile court may also certify a proceeding involving a child alleged to have committed an offense for action under the laws and court procedures controlling adult criminal violations. . . . If the juvenile court certifies an alleged

violation, the prosecuting authority shall proceed with the case as if the jurisdiction of the juvenile court had never attached.

Id. (quotations and citations omitted).

A violation of law by a child before becoming 18 years of age is not a crime unless the juvenile court: (1) certifies the matter for adult prosecution, (2) transfers the matter to a court under a statute governing juvenile traffic offenders, or (3) convicts the juvenile as an EJJ and subsequently executes the juvenile's stayed adult sentence. Minn. Stat. § 260B.255, subd. 1 (2022).

In sum, if a juvenile is successfully prosecuted as a delinquent, he receives only a juvenile disposition and may be on probation until age 19. But he does not receive a criminal conviction. If a juvenile is successfully prosecuted as an EJJ, he receives both a juvenile disposition and a stayed adult criminal sentence, and he may be on probation until age 21. But he does not receive a criminal conviction unless he violates probation and his stayed adult sentence is executed. Finally, if a juvenile offense is certified and the juvenile is successfully prosecuted as an adult, he receives the same sentence that a similarly situated adult would receive, including an executed prison sentence. He also receives a criminal conviction, as well as the stigma and negative collateral consequences that stem from a conviction.

Procedurally, there are several different ways to obtain certification or EJJ prosecution. See Minn. Stat. §§ 260B.125 (setting forth certification methods) (2022);

260B.130 (setting forth EJJ prosecution methods) (2022). In this case, the state requested presumptive certification.³ As is relevant here, the governing statute provides:

It is presumed that a proceeding involving an offense committed by a child will be certified if:

(1) the child was 16 or 17 years old at the time of the offense; and

(2) the delinquency petition alleges that the child committed an offense that would result in a presumptive commitment to prison under the Sentencing Guidelines and applicable statutes

If the court determines that probable cause exists to believe the child committed the alleged offense, the burden is on the child to rebut this presumption by demonstrating by clear and convincing evidence that retaining the proceeding in the juvenile court serves public safety. If the court finds that the child has not rebutted the presumption by clear and convincing evidence, the court shall certify the proceeding.

Minn. Stat. § 260B.125, subd. 3. “If the juvenile court decides not to order certification in a case in which the presumption described in subdivision 3 applies, the court shall designate the proceeding an extended jurisdiction juvenile prosecution” *Id.*, subd. 8(b).

Given the certification process that the state selected, respondent had the opportunity to show that retaining his case in the juvenile system for an EJJ prosecution served public safety. If he were successful in doing so, he would have had the opportunity to avail himself of a juvenile disposition designed to restore him to law-abiding conduct

³ In juvenile court, respondent’s counsel questioned whether the circumstances here satisfied the requirements for presumptive certification. Because that issue is not raised in this appeal, we assume, without deciding, that the state’s motion for presumptive certification was valid.

while addressing his unique needs as a juvenile. More importantly, he would have had the opportunity to avoid an executed prison sentence and a criminal conviction.

When considering whether to certify a proceeding for adult prosecution and whether a juvenile has rebutted a presumption of certification, the juvenile court must consider and balance certain “public safety” factors. *Id.*, subds. 4 (stating that in determining whether the public safety is served by certifying the matter, the court shall consider certain public-safety factors); 8(b) (“If the juvenile court decides not to order certification in a case in which the presumption . . . applies, the court shall designate the proceeding an extended jurisdiction juvenile prosecution and include in its decision written findings of fact and conclusions of law as to why the retention of the proceeding in juvenile court serves public safety, with specific reference to the factors listed in subdivision 4.”).

The statutory public-safety factors are as follows:

- (1) the seriousness of the alleged offense in terms of community protection, including the existence of any aggravating factors recognized by the Sentencing Guidelines, the use of a firearm, and the impact on any victim;
- (2) the culpability of the child in committing the alleged offense, including the level of the child’s participation in planning and carrying out the offense and the existence of any mitigating factors recognized by the Sentencing Guidelines;
- (3) the child’s prior record of delinquency;
- (4) the child’s programming history, including the child’s past willingness to participate meaningfully in available programming;
- (5) the adequacy of the punishment or programming available in the juvenile justice system; and
- (6) the dispositional options available for the child.

Id., subd. 4. “In considering these factors, the court shall give greater weight to the seriousness of the alleged offense and the child’s prior record of delinquency than to the other factors listed in this subdivision.” *Id.*

Factors five and six are often considered together, and both are impacted by the juvenile’s current age.⁴ “Insufficient time for rehabilitation under the juvenile system is an appropriate consideration” when determining whether to certify a case for adult prosecution. *In re Welfare of U.S.*, 612 N.W.2d 192, 197 (Minn. App. 2000). Thus, we consider how the charging delay in this case impacted the time available for rehabilitation in the juvenile system.

Respondent was born on November 6, 2004. He will turn 21—the age at which EJJ jurisdiction and supervision would end—on November 6, 2025. Respondent was 16 years and 8 months old on the date of the alleged offense in this case: July 8, 2021. As to the maximum time remaining for rehabilitation under the juvenile system (i.e., respondent’s twenty-first birthday), a comparison between the July 8, 2021 alleged offense date and the June 26, 2023 charging date is telling.⁵

⁴ A common example of this approach is found in *In re Welfare of T.D.B.*, No. A17-0813, 2017 WL 5661605, at *4 (Minn. App. Nov. 27, 2017), *rev. denied* (Minn. Jan. 24, 2018). In that case, the district court addressed the fifth factor, the adequacy of punishment or programming available in the juvenile-justice system, in conjunction with the sixth factor, the dispositional options available for the child. *T.D.B.*, 2017 WL 5661605, at *4. The district court compared the punishment and treatment available in the adult and juvenile systems, as well as the amount of time that would likely remain for supervision under an EJJ prosecution. *Id.* The district court emphasized its primary concern: “there would not be enough time for adequate punishment and programming in the juvenile system.” *Id.*

⁵ We recognize that an alleged offense is normally not charged on the offense date. We use the offense date as one end of the spectrum for illustrative purposes because that date

At the time of the alleged offense, approximately four years and four months remained until respondent's 21st birthday. But by the time the state filed its charges against respondent on June 26, 2023, respondent was over 18 years and 7 months old. At that point, only approximately two years and four months remained until respondent's 21st birthday. The state's decision to move for presumptive certification was discretionary and likely based on respondent's advanced age at the time of charging. Moreover, two years of potential rehabilitative programming in the juvenile-justice system under EJJ supervision had been lost as a result of the charging delay. That passage of time prejudiced respondent's chance of demonstrating that retaining the proceeding in the juvenile court would serve public safety. As the juvenile court reasoned, for individuals over the age of 18, juvenile "treatment options are limited and require special waivers."

In this case, the stakes were high for respondent. As charged, he faced presumptive certification, a criminal conviction, and a presumptive prison sentence. If respondent rebutted the presumption and demonstrated by clear and convincing evidence that retaining the proceeding in the juvenile court would serve public safety, he would have received a juvenile disposition, including both punishment and rehabilitative programming specific

is undisputed. It is also undisputed that within 11 days of the alleged offense date, law enforcement had interviewed the complaining witness, received the results of the complaining witness's sexual-assault examination, analyzed the complaining witness's cell phone, received surveillance footage of the complaining witness's residence, obtained identifying information regarding the suspect, identified respondent as the suspect, and communicated with respondent's mother in an attempt to interview respondent regarding the alleged offense.

to his needs as a juvenile. And he could have avoided an executed prison sentence, as well as a criminal conviction.

The record does not tell us whether respondent had a prior history of delinquent behavior. Although there was no reason to put such information before the court in the limited proceeding below, nothing in the record suggests that respondent has had behavioral problems at home, in school, or in the community—other than a reference to a curfew citation in the charging document. But the record contains testimony—which the district court credited—describing respondent’s history of epilepsy, a grand mal seizure when he was younger, on-going mini-seizures, anxiety, and educational challenges during COVID, as well as his efforts to overcome those issues, including his admission to college.

On this record, public-safety factors five and six could have weighed in favor of an EJJ prosecution. But the state’s unnecessary charging delay significantly reduced the amount of time available for respondent to be supervised on EJJ probation and to receive rehabilitative programing in the juvenile system. The state’s unexplained and unnecessary two-year charging delay indisputably prejudiced respondent’s ability to avoid presumptive certification. We therefore reject the state’s assertion that “there was no tactical advantage gained by the [s]tate based on the timing of the filing of the petition in this case.” To be clear, we do not suggest that the state intentionally delayed charging to obtain a tactical advantage. But the charging delay did in fact benefit the state’s attempt to achieve presumptive certification in a way that unfairly prejudiced respondent.

The state argues that “the juvenile court’s focus upon the disposition options available to [r]espondent is contrary to law.” But as the state notes, there is no precedential

authority applying or interpreting rule 6.08. And the plain language of the rule does not require a showing of prejudice. In addition, the supreme court recently emphasized that a juvenile rule is not necessarily read in the context of a comparable criminal rule “[b]ecause different policy interests inform the rules of juvenile delinquency procedure on the one hand, and the rules of criminal procedure on the other.” *D.J.F.-D.*, 3 N.W.3d at 275. We therefore fail to discern how the juvenile court’s approach could be “contrary to law.” Instead, the juvenile court’s approach is consistent with the purpose underlying the juvenile system, which emphasizes juvenile rehabilitation “through means that are fair and just, that recognize the unique characteristics and needs of children, and that give children access to opportunities for personal and social growth.” Minn. Stat. § 260B.001, subd. 2; Minn. R. Juv. Delinq. P. 1.02.

The state also argues that we must give “substantial deference to the state’s decision regarding when to initiate criminal charges.” The state cites *State v. F.C.R. (In re Welfare of F.C.R.)* as support, in which the supreme court held that “[u]nder the facts and circumstances, an eight-month delay in prosecution was not an abuse of prosecutorial discretion on which the juvenile court could base its dismissal of the prosecution’s adult [certification] motion.” 276 N.W.2d 636, 637 (Minn. 1979). For the reasons that follow, *F.C.R.* is not analogous to this case.

First, the rulings in *F.C.R.* were not based on rule 6.08: the *F.C.R.* respondent argued that the charging delay violated his right to due process. *See id.* at 638 (“Respondent claims that the eight-month delay denied him due process”). In this case, the juvenile

court's ruling was based on rule 6.08, and not on due process.⁶ Indeed, the supreme court in *F.C.R.* did not consider application of Minn. R. Juv. Delinq. P. 6.08 because that rule was not promulgated until 2010, some 30 years later. *Promulgation of Amendments to the Minnesota Rules of Juvenile Delinquency Procedure*, No. ADM10-8003 (Minn. Nov. 19, 2010).

Second, the supreme court's decision in *F.C.R.* predates the legislature's adoption of Minnesota's current presumptive-certification and EJJ statutory scheme, which did not take effect until 1995. See 1994 Minn. Laws ch. 576, at 934-85 (providing for "presumptive certification to adult court for juveniles over age 16 alleged to have committed other prison-level felonies . . . ; authorizing the court or the prosecutor to designate a juvenile an extended jurisdiction juvenile; authorizing adult felony sentences for extended jurisdiction juveniles; extending juvenile court jurisdiction to age 21 for extended jurisdiction juveniles; limiting certification to adult court to felony offenses"); *In re Welfare of B.C.G.*, 537 N.W.2d 489, 490 (Minn. App. 1995) ("The 1994 amendments to the juvenile statutes and rules govern actions commenced or arrests made after January 1, 1995.").

⁶ For that reason, we do not address the state's assertion that a showing of improper motive was necessary to justify dismissal. See *F.C.R.*, 276 N.W.2d at 639 ("To establish a violation of the due process clause due to pre-indictment delay, a defendant must prove both actual prejudice and an improper state purpose.").

When *F.C.R.* was decided, the law regarding certification for adult prosecution—then called “reference”—did not provide for presumptive certification or EJJ, nor did it require the juvenile court to balance today’s public-safety factors when ruling on a certification motion under the current statutory scheme.⁷ Minn. Stat.

⁷ Minn. Stat. § 260.125 (1976) provided:

REFERENCE FOR PROSECUTION. Subdivision 1. When a child is alleged to have violated a state or local law or ordinance after becoming 14 years of age the juvenile court may enter an order referring the alleged violation to the appropriate prosecuting authority for action under laws in force governing the commission of and punishment for violations of statutes or local laws or ordinances. The prosecuting authority to whom such matter is referred shall within the time specified in such order of reference, which time shall not exceed 90 days, file with the court making such order of reference notice of intent to prosecute or not to prosecute. If such prosecuting authority files notice of intent not to prosecute or fails to act within the time specified, the court shall proceed as if no order of reference had been made. If such prosecuting authority files with the court notice of intent to prosecute the jurisdiction of the juvenile court in the matter is terminated.

Subd. 2. The juvenile court may order a reference only if

(a) A petition has been filed in accordance with the provisions of section 260.131

(b) Notice has been given in accordance with the provisions of sections 260.135 and 260.141

(c) A hearing has been held in accordance with the provisions of section 260.155, and

(d) The court finds that the child is not suitable to treatment or that the public safety is not served under the provisions of laws relating to juvenile courts.

Subd. 3. When the juvenile court enters an order referring an alleged violation to a prosecuting authority, the prosecuting authority shall proceed with the case as if the jurisdiction of the juvenile court had never attached.

§ 260.125, subd. 1 (1976); *see F.C.R.*, 276 N.W.2d at 638 (reviewing the dismissal of an “adult reference motion”). Thus, the dispositional prejudice on which the juvenile court relied in this case was simply not an issue when *F.C.R.* was decided. Given the extremely different legal landscape at the time of the supreme court’s decision in *F.C.R.*, that case is not relevant regarding the issue presented here.

We recognize that “[g]enerally, a prosecutor has broad discretion in the exercise of the charging function and ordinarily, under the separation-of-powers doctrine, a court should not interfere with the prosecutor’s exercise of that discretion.”⁸ *State v. Foss*, 556 N.W.2d 540, 540 (Minn. 1996). But a prosecutor must be mindful of the purpose of the juvenile system, which focuses on public safety and dispositional planning to reduce delinquent behavior and restore law-abiding behavior. The ability to achieve those goals without compromising public safety is inevitably impacted by the amount of time available for rehabilitation in the juvenile system. Although a prosecutor has broad charging discretion, it must be exercised consistently with the purpose of that system and the time constraints affecting that purpose. That did not occur here.

In conclusion, there is no basis to hold that the juvenile court abused its discretion in dismissing the charge against respondent under rule 6.08. There is no dispute regarding the relevant facts, and the juvenile court applied the plain language of rule 6.08 consistently with the purpose of the statutes and rules governing the prosecution of juveniles. The juvenile court’s approach, which did not rely on the corresponding rule of criminal

⁸ Although the state repeatedly refers to its charging discretion, it does not assert a separation-of-powers violation.

procedure and associated caselaw, was not an abuse of discretion. *See D.J.F.-D.*, 3 N.W.3d at 275.

We appreciate and regret that the complaining witness will not receive justice as a result of the state's unnecessary charging delay. And we acknowledge that the DNA evidence strengthened the state's case against respondent. But we fail to discern—and the state has not explained—why it was necessary to wait seven months after the DNA test results were available before charging respondent. We also fail to discern—and the state does not explain—why the charge was not filed pending the results of the DNA testing, as is often done. Juvenile-delinquency prosecutions are like criminal prosecutions in one respect: the vast majority of cases are settled with plea negotiations. Had the state charged this case in a timelier fashion, it could have been resolved using the full array of dispositional options available in juvenile court. It is unfortunate that the state failed to do so, and the result is not fair to the complaining witness and her family. But we are obligated to follow the law.

Assuming without deciding that a showing of prejudice is required to obtain a dismissal under rule 6.08, the juvenile court did not abuse its discretion by dismissing the charge against respondent based on the state's unnecessary two-year charging delay, which significantly reduced the amount of time remaining to rehabilitate respondent in the juvenile system and therefore prejudiced respondent's ability to rebut the state's motion for presumptive certification.

Affirmed.