

STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8047

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APPELLATE COURTS

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**ORDER PROMULGATING AMENDMENTS TO
THE MINNESOTA RULES OF EVIDENCE**

The Minnesota County Attorneys Association filed a petition in April 2024, requesting that this court amend Minnesota Rules of Evidence 803(6) and 902(11) to conform with the Federal Rules of Evidence by permitting a certification of the custodian—rather than only the custodian’s live witness testimony—to satisfy the authenticity requirement for domestic records of a regularly conducted activity in laying the foundation for the business records exception to the hearsay rule under Rule 803(6). On June 3, 2024, we directed the Minnesota Supreme Court Advisory Committee on the Rules of Evidence (Advisory Committee) to consider the petition and file a report and recommendation on the proposed amendments. The Advisory Committee met multiple times and then filed a report recommending rule changes. We opened a public comment period and held a public hearing on October 29, 2025.

After thorough consideration of the petition and the public comments, we adopt the Minnesota County Attorneys Association’s proposal and the Advisory Committee’s recommendation to amend Minnesota Rules of Evidence 803(6) and 902(11) to generally conform with the Federal Rules of Evidence, with some modification. We also refer to

the advisory committees for the Minnesota Rules of Criminal Procedure and Minnesota Rules of Juvenile Protection Procedure the question of whether amendments to those rules would be appropriate in light of these amendments to the Rules of Evidence.

History

The Minnesota Rules of Evidence were first promulgated in 1977. *See* Order Promulgating the Rules of Evidence, No. C3-84-2138, Order at 1–2 (Minn. filed Apr. 1, 1977). Since the inception of the Minnesota Rules of Evidence, the Federal Rules of Evidence have been looked to “[a]s a model,” with Minnesota’s first rules committee recognizing that following the federal rules “present[ed] an opportunity for uniformity in trial practice and procedure.” Minn. R. Evid. advisory comm. cmt.—1976. Minnesota Rules of Evidence 901, 902, and 903 governing authentication and identification were not included among those for which the committee recommended a substantive departure from the federal rules. *Id.* Minnesota Rule of Evidence 902, when it was first promulgated, followed the Federal Rules of Evidence as they existed at that time. Order Promulgating the Rules of Evidence, C3-84-2138, Order at 1–2 (Minn. filed Apr. 1, 1977); Fed. R. Evid. 902 (1978).

In 2000, the Federal Rules of Evidence adopted the amendments to Federal Rules of Evidence 803(6) and 902(11) for self-authentication that are now proposed here. Those new paragraphs to the rule on self-authentication “set[] forth a procedure by which parties can authenticate certain records of regularly conducted activity, other than through the testimony of a foundation witness.” Fed. R. Evid. 902(11) advisory comm. note—2000. The amendment to Fed. R. Evid. 902(11) also included a notice

requirement, which “is intended to give the opponent of the evidence a full opportunity to test the adequacy of the foundation set forth in the declaration.” *Id.*

As the Advisory Committee observed in its pending report and recommendation, some version of the self-authentication rule in Fed. R. Evid. 902(11) has been adopted by 33 states, including all of Minnesota’s neighboring states.¹ We also recognize, however, that historically, our Advisory Committee has recommended against incorporating these amendments into the Minnesota Rules of Evidence. In 1989, the Advisory Committee recommended against adopting “Uniform Rule 902(11),” which was similar to the rule later adopted by the Federal Rules. Minn. R. Evid. 902 cmt.—1989. And in 2006, the Advisory Committee reviewed the amendments to the Federal Rules of Evidence and concluded that “adoption of the federal certification process could potentially complicate rather than simplify the admissibility of business records in Minnesota courts.” 11 Peter

¹ The 33 states and their rules are as follows: Alabama (Ala. R. Evid. 902(11)); Alaska (Alaska R. Evid. 902(11)); Arizona (Ariz. R. Evid. 902(11)); Colorado (CRE 902(11)); Delaware (D.R.E. 902(11)); Georgia (Ga. Code Ann. § 24-9-902(11)); Hawaii (Haw. Rev. Stat. § 626-1, Rule 902(11)); Idaho (I.R.E. 902(11)); Illinois (Ill. R. Evid. 902(11)); Indiana (Ind. Evid. R. 902(11)); Iowa (Iowa R. Evid. 5.902(11)); Kansas (Kan. Stat. Ann. § 60-465(b)(7)); Kentucky (KRE 902(11)); Louisiana (La. Code Evid. Ann. art. 902(11)); Maine (M.R. Evid. 902(11)); Maryland (Md. Rule 5-902(12)); Michigan (MRE 902(11)); Mississippi (M.R.E. 902(11)); Nebraska (Neb. Rev. Stat. § 27-902(11)); New Hampshire (N.H. R. Ev. 902(11)); New Mexico (N.M. R. Evid. 11-902(11)); North Dakota (N.D.R.Ev. 902(11)); Ohio (Ohio Evid.R. 902(11)); Oklahoma (Okla. Stat. tit. 12, § 2902(11)); Pennsylvania (Pa.R.E. 902(11)); South Dakota (S.D. Codified Laws § 19-19-902(11)); Tennessee (Tenn. R. Evid. 902(11)); Utah (Utah R. Evid. 902(11)); Vermont (V.R.E. 902(11)); Virginia (Va. R. Evid. 2:902(6)); Washington (Wash. Rev. Code § 10.96.030); West Virginia (W. Va. R. Evid. 902(11)); and Wisconsin (Wis. Stat. § 909.02(12)).

N. Thompson, *Minnesota Practice Series—Evidence* § 101 (5th ed. 2025) (Advisory Committee Preliminary Comment to 2006 Amendments).

More recently, however, the Advisory Committee has reevaluated its position. In 2016, the Advisory Committee again “discussed changes in the federal rules simplifying the admissibility of business records under Rule 803(6) and Fed. R. Evid. 902(11).” *Id.* (comments to 2016 report). And while the committee “decided to take no action at th[at] time,” it noted that it “will continue to monitor the issue and may consider rules amendments in the future.” *Id.* The pending petition from the Minnesota County Attorneys Association has now led the Advisory Committee to consider the issue again and to recommend adopting these amendments at this time.

The Pending Petition

The pending petition was filed by the Minnesota County Attorneys Association, arguing that changed circumstances call for Minnesota Rules of Evidence 803(6) and 902(11) to be amended consistent with the Federal Rules of Evidence and all our neighboring states. We referred this issue to the Advisory Committee, which agrees. The Advisory Committee now recommends—consistent with the petition and with the support of the Attorney General²—that Rule 803(6) and Rule 902(11) be amended to bring the

² Following our referral of the Minnesota County Attorneys Association’s petition to the Advisory Committee, the Attorney General filed with our court, on October 23, 2024, a letter directed to the Advisory Committee. The letter expressed the Attorney General’s support for the petition and recommended further amendments to Minnesota Rules of Evidence 902(13) and 902(14), consistent with the Federal Rules of Evidence. On April 17, 2025, we referred consideration of these additionally-proposed amendments to the Advisory Committee. The Advisory Committee’s recommendations on the

Minnesota Rules of Evidence into conformity with the Federal Rules of Evidence and the majority of other states, as well as to simplify the process and provide consistency.

We agree. The evolution in technology is a substantial reason for adopting these amendments, at this time, to conform with the Federal Rules of Evidence and the majority of other states. The Minnesota County Attorneys Association and the Attorney General both highlighted changes in the technological landscape, which the Advisory Committee recognized. Increasingly, the business records for which authentication is being sought are tied to electronic-related evidence held by out-of-state social media, internet-related, or cellular companies. The requirement for live testimony to authenticate such records—especially from out-of-state custodians—is both time-consuming and expensive and could otherwise be avoided by permitting self-authentication by certification. The Advisory Committee also acknowledged that this foundation testimony is seldom objected to or meaningfully disputed, even though there is sometimes no incentive for one or more parties to stipulate to the foundation. In sum, the Advisory Committee advises that “[t]he current process is inefficient, cumbersome, wasteful, and unnecessary.”

We further agree with the Advisory Committee, however, that while “[t]he proposed rule amendments would result in real cost and time savings for all parties,” efficiency cannot be the only concern. While eliminating unjustified expense and delay is part of the Minnesota Rules of Evidence’s purpose, the rules are directed “to the end that

proposed amendments to Rules 902(13) and 902(14) will be addressed in a separate report and considered at a later time by this court.

the truth may be ascertained and proceedings justly determined.” *See* Minn. R. Evid. 102 (providing that “[t]hese rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence”). We thus appreciate that, before issuing its recommendation, “the Committee fully explored the potential negative impacts of the proposed rule amendments.” Significantly, however, we are not operating against a blank slate in adopting the proposed amendments. The same purposes likewise underlie the Federal Rules of Evidence. *See* Fed. R. Evid. 102 (“These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.”). And the amendments proposed here have been the law under the Federal Rules of Evidence for the past quarter century and have proven to be workable. Moreover, our courts will have the benefit of decisions from the federal courts—as well as those from the 33 other states that have adopted a similar rule—as issues surrounding these new rules come before our courts.

We also observe that the proposed amendment to Rule 902(11) builds in a safeguard: “Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record—and must make the record and certification available for inspection—so that the party has a fair opportunity to challenge them.” Moreover, to the extent concerns were raised in the public comments that this proposed rule offered little guidance on what will constitute “reasonable” notice, we are amending Rule 902(11) to clarify that—while non-exhaustive—“reasonable written

notice must include, but is not limited to, the provision of sufficient time for (1) the adverse party to meaningfully investigate the records and the certification; (2) the adverse party to make any objection; (3) the court to rule on any such objection in advance of the hearing; and (4) the proponent to obtain live testimony if the court sustains the objection.”³

We also agree with the Advisory Committee that other concerns about the impact of these amendments can generally be addressed in other ways and under other rules. The Minnesota Board of Public Defense, for example, focused its public comments on possible Confrontation Clause concerns raised by the proposed amendments. But the proposed amendments only go to the means of authentication; they do not foreclose a Confrontation Clause challenge in a criminal matter or prevent parties from raising other objections to admissibility. Moreover, to the extent that issues unique to a particular area of law may exist—as the Advisory Committee and Hennepin County Adult Representation Services in its public comments identified as to child protection matters—we are reluctant to include any special rules for a particular type of case in the Minnesota Rules of Evidence, which are largely trans-substantive. Instead, we agree with the Advisory Committee that those issues are best addressed by the rules governing that specific area of law. To that end, we specifically refer consideration of these amendments

³ We are also modifying the proposed amendment to Minn. R. Evid. 902(11) by clarifying that a “domestic record” is “a record kept within the United States, or any state, district, commonwealth, or within a territory subject to the administrative or judicial jurisdiction of the United States.” This definition is consistent with Minn. R. Civ. P. 44(a).

to the advisory committees for the Minnesota Rules of Criminal Procedure and Minnesota Rules of Juvenile Protection Procedure to consider whether amendments to those rules would be appropriate in light of these amendments to the Rules of Evidence.

IT IS HEREBY ORDERED THAT:

1. The attached amendments to the Minnesota Rules of Evidence are prescribed and promulgated, effective on January 1, 2027. The rules as promulgated will be effective in all cases filed on or after the effective date of the amendments. The Advisory Committee comments are included for convenience and do not reflect court approval of the comments.

2. We refer to the advisory committees for the Minnesota Rules of Criminal Procedure and Minnesota Rules of Juvenile Protection Procedure the question of whether amendments to those rules would be appropriate in light of these amendments to the Minnesota Rules of Evidence. Those committees must file their report and recommendation on or before June 30, 2027.

3. In an order filed on May 4, 2026, we ordered the Minnesota Supreme Court Advisory Committee on the Rules of Evidence to file its report on the Attorney General's proposed amendments to the rules by November 30, 2026. *See* Order Authorizing Extension to Minnesota Supreme Court Advisory Committee on the Rules of Evidence, No. ADM10-8047 (Minn. filed May 4, 2026). We hereby extend the date for that report to April 30, 2027.

Dated: October 21, 2026

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Theodora Gaïtas', written in a cursive style.

Theodora Gaïtas
Chief Justice

ALIGADA, Jr., J., not having been a member of the court at the time of the court's consideration of the recommendations by the Minnesota Supreme Court Advisory Committee on the Rules of Evidence addressed in this order, took no part in the court's consideration or decision as to these amendments.

D I S S E N T

HENNESY, Justice (dissenting).

Petitioner Minnesota County Attorneys Association asks us to bring Minnesota Rules of Evidence 803(6) and 902(11) into alignment with the corresponding Federal Rules of Evidence by permitting a custodian's certification, rather than live testimony, to serve as foundational evidence of authenticity for purposes of the Rule 803(6) hearsay exception for business records.¹ The Advisory Committee has considered and previously rejected this proposed rule three times and for good reasons.² Because the amended rules create considerable tension with the Confrontation Clause and effectively shift the burden to a criminal defendant to raise foundational authenticity issues and produce evidence challenging foundation, I respectfully dissent.

¹ Under the Minnesota Rules of Evidence, statements made outside of current court proceedings offered to prove the truth of the matter asserted are inadmissible unless a hearsay exception applies. *See* Minn. R. Evid. 802 (setting out the general rule against hearsay evidence), 801(c) (defining hearsay).

² The current comments to Minnesota Rule of Evidence 902(11) note:

Under present Minnesota law, the authentication requirement for business records is found in Rule 803(6) (...“all as shown by the testimony of the custodian or other qualified witness,...”). The extensive discovery available in both civil and criminal procedures provides a vehicle for resolving authentication issues before trial. The authentication requirement is generally waived. With respect to the minority of cases in which the parties cannot resolve the issue prior to trial, the committee took the view that a party should have the right to insist upon the proof required by Rule 803(6). For these reasons the committee decided not to recommend that business records be added to the list of self-authenticating documents, and recommends that Uniform Rule 902(11) not be adopted.

Minn. R. Evid. 902(11) comm. cmt.

Rules 803(6) and 902(11) are trans-substantive and apply in both civil and criminal proceedings. But the nature and complexity of modern business records may implicate the Confrontation Clause in novel and subtle ways when they are deployed in criminal prosecutions. The Confrontation Clause guarantees criminal defendants the right “to be confronted with the witnesses against [them]” at trial. U.S. Const. amend. VI. And even if testimony establishing foundational authenticity of records evidence may not colloquially be considered accusatory, the Confrontation Clause sweeps more broadly—it applies to *any* witness who “bears testimony” against a defendant. *Crawford v. Washington*, 541 U.S. 36, 51 (2004); *see also Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 313–14 (2009) (“The text of the [Sixth] Amendment contemplates two classes of witnesses—those against the defendant and those in his favor.... [T]here is not a third category of witnesses, helpful to the prosecution, but somehow immune from confrontation.” (footnote omitted)). This court and the United States Supreme Court have interpreted the confrontation right, if not waived, to mean that testimonial hearsay evidence is *categorically* inadmissible against a criminal defendant unless (1) the prosecution’s witness is unavailable to testify, and (2) the defendant had a prior opportunity to cross-examine the witness. *Crawford*, 541 U.S. at 68; *State v. Trifiletti*, 6 N.W.3d 79, 88–91 (Minn. 2024) (stating and applying the *Crawford* inquiry). The right of confrontation should not be subject to the “vagaries of the rules of evidence,” *Crawford*, 541 U.S. at 61, because “constitutional rights are not typically defined ... by reference to non-constitutional bodies of law like evidence rules.” *Smith v. Arizona*, 602 U.S. 779, 794 (2024).

Because a custodian’s certification is, by definition, an out-of-court statement offered to prove the truth of the matter asserted, the Confrontation Clause analysis here turns entirely on whether the certification is testimonial. Although the Supreme Court has not provided comprehensive guidance on what makes a witness’s statement testimonial, it has observed that a statement “prepared specifically for use at [the defendant]’s trial” is plainly testimonial. *Melendez-Diaz*, 557 U.S. at 324. We too have concluded that “the critical determinative factor in assessing whether a statement is testimonial is whether it was prepared for litigation.” *State v. Caulfield*, 722 N.W.2d 304, 309 (Minn. 2006) (holding that a Bureau of Criminal Apprehension lab report prepared during an investigation for eventual prosecution was testimonial under *Crawford*). Still, the Supreme Court has stated in dicta that business records sought to be introduced as an exception to the rule against hearsay are not themselves testimonial because they are “created for the administration of an entity’s affairs and not for the purpose of establishing or proving some fact at trial.” *Melendez-Diaz*, 557 U.S. at 324; *see also Crawford*, 541 U.S. at 56 (noting that business records “by their nature [a]re not testimonial”). But lower federal courts have taken this a step further, concluding that, because the records themselves are not testimonial, neither are custodians’ certifications of those records. *See, e.g., United States v. Denton*, 944 F.3d 170, 183–84 (4th Cir. 2019); *United States v. Weiland*, 420 F.3d 1062, 1077 (9th Cir. 2005).

In my view, this reasoning risks oversimplifying the issue and concealing serious confrontation violations, especially for the types of record evidence that petitioner points to as necessitating these rule amendments. To me, whether a so-called certification is

testimonial depends on its content and the nature of the underlying records. *See Melendez-Diaz*, 557 U.S. at 308–10 (holding that the “certificates of forensic analysis” prepared by lab technicians were functionally equivalent to affidavits and therefore fell “within the ‘core class of testimonial statements’ ” *Crawford* describes). The Supreme Court made this point rather directly in *Melendez-Diaz*. It noted that the “narrowly circumscribed” historical exception of a custodian’s certificate from Confrontation Clause scrutiny merely permitted the custodian “to certify to the correctness of a copy of a record kept in his office.” *Id.* at 322 (citation omitted) (internal quotation marks omitted). The custodian *could not*, however, “furnish, as evidence for the trial of a lawsuit, his interpretation of what the record contains or shows, or certify to its substance or effect.” *Id.* (quoting *Wilson*, 75 So. at 97) (internal quotation marks omitted). Put differently, “[a] clerk could by affidavit *authenticate* or provide a copy of an otherwise admissible record, but could not ... *create* a record for the sole purpose of providing evidence against a defendant.” *Id.* at 322–23.

As a practical matter, this line is blurry at best today. In my experience, there is no fixed format for these “certifications”; they vary widely in form and content, often depending on the nature of the underlying records. Again, *Melendez-Diaz* is instructive here. In that case, the Supreme Court considered whether “certificates of analysis” describing the results of forensic lab testing on drugs seized from the defendant were subject to Confrontation Clause protection. *Id.* at 308. Holding that they were, the Court characterized the certificates as akin to substantive affidavits. *Id.* at 310–11. The certificates were specifically prepared for use at trial and were “functionally identical to

live, in-court testimony, doing ‘precisely what a witness does on direct examination’ ” because they identified the drug and reported measurement of the quantity seized. *Id.* (quoting *Davis v. Washington*, 547 U.S. 813, 830 (2006)). After *Melendez-Diaz*, it seems obvious that descriptions of forensic lab analyses performed by law enforcement are testimonial in nature. The same may be true for certain law enforcement uses of the exact types of records petitioner, by this rule change, seeks to introduce without custodian testimony: user information gathered by large technology platforms such as Google and Meta. Granted, the raw data underlying such records may not be testimonial because the companies generate and store it for business purposes. But these companies generate such massive quantities of user data that, at least in some contexts, the data is useless in raw form—it must be searched, collated, analyzed, and sometimes visualized to be useful to law enforcement. Thus, these troves of user data are simply not equivalent to the more archaic paper records that predominated when the Federal Rules of Evidence were adopted and when *Crawford*, decided in 2004, deemed the business record exception harmless to defendants’ confrontation rights. Depending on how data is processed and a certification’s content, employees at these companies responding to a warrant could easily cross the line between certifying data correctness and providing an “interpretation of what the [data] contains or shows,” “certify[ing] to [the data’s] substance or effect,” or “[creating] a record for the sole purpose of providing evidence against a defendant.” *Melendez-Diaz*, 557 U.S. at 322–23 (quoting *Wilson*, 75 So. at 97) (internal quotation marks omitted).

The cell phone user location information at issue in geofence warrants—warrants that seek information about which cell phones were present in selected geographic coordinates within a certain period of time—illustrates my concerns here. As recently described by the United States Supreme Court, these warrants have become prevalent since 2016, when Google received its first geofence warrant. *Chatrue v. United States*, 609 U.S. 605 146 S. Ct. 2193, 2201 (2026).³ Google has developed a three-step protocol for geofence warrants. *Id.* at 2202. The first step requires Google to produce anonymized location data for all users that registered their location inside a designated perimeter within a fixed time period. *Id.* Under the second step, for specific (but still anonymous) users, law enforcement asks Google to produce additional location history data both inside and outside the original perimeter for a broader timeframe. *Id.* The third step requires Google to provide identities for a further subset of users. *Id.* This geofence procedure, however, “d[oes] not give the police access to the Location History files themselves.” *Id.* at 2227 (Alito, J., dissenting). “Rather, Google use[s] the information contained in those files to generate a spreadsheet” that summarizes the data. *Id.*

Although location data itself may not be testimonial, analyses and summaries generated from that data could be—they are prepared in anticipation of litigation and “create[d] ... for the sole purpose of providing evidence against a defendant” and

³ *Chatrue* concerned only whether the Fourth Amendment applies to a geofence warrant; there was no confrontation issue before the Court. 609 U.S. at 605, 146 S. Ct. at 2199. I discuss geofence warrants only as an example of why the line between certifications of authenticity and testimonial statements is not as neat as petitioner suggests.

establishing his or her participation in a crime. *Melendez-Diaz*, 557 U.S. at 323 (emphasis omitted). Defendants may not have sufficient information from the face of such records to determine whether they are testimonial—and, under the new rule, may not have sufficient access to such information to appropriately challenge the records.

I recognize that the notice provision of the amended rules gives defendants a reasonable opportunity to spot potential confrontation issues and force the State to procure live testimony subject to cross-examination if the court sustains an objection.⁴ Even so, the amended rules flip the structure of the Confrontation Clause on its head. “[T]he Confrontation Clause imposes a *burden* on the *prosecution* to present its witnesses, not on the *defendant* to bring those adverse witnesses into court.” *Melendez-Diaz*, 557 U.S. at 324 (emphasis added); *see also Caulfield*, 722 N.W.2d at 306–07 (invalidating a statute that treated a failure to request in-person testimony from State lab analysts 10 days before trial as a waiver of the defendant’s confrontation rights). The petitioner requests this inversion not based on any legal theory, but for the sake of efficiency alone. That is not how we have treated the Confrontation Clause. “[B]y our reading, *Crawford* removed the flexibility courts had to balance the state’s interests,

⁴ The Advisory Committee appears not to have considered the option of retaining the testimony requirement for records custodians but allowing those witnesses to appear remotely via live, two-way video. *See State v. Tate*, 985 N.W.2d 291, 294 (Minn. 2023) (permitting remote video testimony over a Confrontation Clause objection when witness was forced to quarantine during the COVID-19 pandemic). Allowing remote testimony could alleviate petitioner’s concerns with the cost of producing these witnesses in court while still preserving a defendant’s ability to cross-examine the witnesses and a fact-finder’s ability to judge their demeanor and sincerity on the stand, as the Confrontation Clause commands.

however legitimate, against the need for prior cross-examination and unavailability of the witness before testimonial evidence can be admitted.” *Caulfield*, 722 N.W.2d at 312. And although the amended rules require the State to give written notice and a reasonable opportunity for defendants to investigate records and certification, our case law seems to at least require a district court to inform defendants that failure to object constitutes a waiver of their confrontation rights. *Id.* at 313 (“[A]lthough there may be legitimate public policy reasons to advance the time to assert confrontation rights to a reasonable time before trial, such a shift cannot be constitutionally accomplished without adequate notice to the defendant that his failure to request the testimony of the [witness] will result in the waiver of his confrontation rights”). That requirement does not appear on the face of the amended rules.

This brings me to what I see as the larger, more structural issue with today’s rule amendments: they essentially shift the burden to criminal defendants to produce evidence rebutting records’ authenticity. Because the proponent of evidence no longer has to establish foundational authenticity through in-court testimony, a defendant can no longer rely on cross-examination to rebut the State’s evidence of authenticity or a record custodian’s possibly testimonial statements. Instead, an (often indigent) defendant must expend resources to investigate whether the records the State offers are accurate and complete. Again, this is particularly problematic in the context of the user information records the petitioner and the Attorney General highlight. The processes by which this information is generated, stored, analyzed, and produced are opaque at best. And the advent of artificial intelligence will undoubtedly complicate applying these amendments.

With many companies already incorporating artificial intelligence into their workflows, the sophisticated technology companies the petitioner references may automatically generate or manage certain information or records using artificial intelligence in the not-so-distant future—if they do not do so already. Rather than require a State witness to explain these processes in court, the amended rules seem to require the *defendant* to independently investigate them—or even to produce their own witnesses—should they wish to contest a State witness’s certifications to the records’ accuracy and completeness or the witness’s interpretation of what they establish.

If the State wishes to deploy these increasingly complex and extensive private surveillance technologies in its criminal prosecutions, it should bear the costs of doing so. Those costs are obvious and foreseeable considering that Minnesota has required live testimony to establish foundational authenticity for over 50 years, and they should not outweigh criminal defendants’ procedural rights. For these reasons, I respectfully dissent.

AMENDMENTS TO THE MINNESOTA RULES OF EVIDENCE

[Note: In the following amendments, deletions are indicated by a line drawn through the words and additions are indicated by a line drawn under the words.]

* * *

Rule 803. Hearsay Exceptions; Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

* * *

(6) **Records of regularly conducted business activity.** A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness or by certification that complies with Rule 902(11), unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term “business” as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit. A memorandum, report, record, or data compilation prepared for litigation is not admissible under this exception.

* * *

Committee Comment – 2026

Rule 803(6)

Rule 803(6) has been amended to provide that under certain circumstances the foundational requirements of the rule can be satisfied as provided in Rule 902(11).

* * *

Rule 902. Self-authentication

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

* * *

(11) **Certified Domestic Records of a Regularly Conducted Activity.** The original or a copy of a domestic record that meets the requirements of Rule 803(6), as shown by a certification of the custodian or another qualified person in the form of an affidavit made under penalty of perjury. A domestic record is a record kept within the United States, or any state, district, commonwealth, or within a territory subject to the administrative or judicial jurisdiction of the United States. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record—and must make the record and certification available for inspection—so that the party has a fair opportunity to challenge them. Reasonable written notice must include, but is not limited to, the provision of sufficient time for (1) the adverse party to meaningfully investigate the records and the certification; (2) the adverse party to make any objection; (3) the court to rule on any such objection in advance of the hearing; and (4) the proponent to obtain live testimony if the court sustains the objection.

* * *

Committee Comment – 2026

Rule 902(11)

Rule 902(11) has been added, consistent with Federal Rule of Evidence 902(11). It sets forth a procedure by which parties can authenticate certain records of regularly conducted activity other than through the testimony of a foundation witness. See the amendment to Rule 803(6).

A proponent establishing authenticity under this Rule must present a certification containing information that would be sufficient to establish authenticity were that information provided by a witness at trial. If the certification provides information that would be insufficient to authenticate the record if the certifying person testified, then authenticity is not established.

The rule does not automatically establish admissibility. A certification under this Rule can establish only that the proffered item has satisfied the requirements for authenticity. The adverse party remains free to object to the admissibility of the proffered record or its contents on any other grounds—

including but not limited to hearsay, relevance, or the rights of confrontation in criminal cases.

The rule requires reasonable written notice of intent to authenticate a record by a certification. Because pretrial procedures vary between case types, the Committee decided not to recommend a specific notice period or a specific notice procedure beyond requiring that the notice be in writing. Instead, the rule leaves the determination of what constitutes reasonable notice to be determined on a case-by-case basis. As appropriate to the case, reasonable written notice should include sufficient time for (1) the adverse party to meaningfully investigate the records and the certification; (2) the adverse party to make any objection; (3) the court to rule on any such objection in advance of the hearing; and (4) the proponent to obtain live testimony if the court sustains the objection.