

Rule 23. Petty Misdemeanors and Violations Bureaus**Rule 23.01 Definition of Petty Misdemeanor**

"Petty misdemeanor" means an offense punishable by a fine of not more than \$300 or other amount established by statute as the maximum fine for a petty misdemeanor.

Rule 23.02 Certification as Petty Misdemeanor by Sentence Imposed

A conviction is deemed a petty misdemeanor if the sentence imposed is within petty misdemeanor limits.

Rule 23.03 Violations Bureaus

Subd. 1. Establishment. The district court may implement and operate violations bureaus. The State Court Administrator may implement and operate the Minnesota Court Payment Center.

Subd. 2. Fine Schedules.

(1) Uniform Statute and Administrative Rule Fine Schedule. The Judicial Council must adopt and, as necessary, revise a uniform fine schedule setting fines for petty misdemeanors and for misdemeanors as it selects. The uniform fine schedule is applicable statewide, and is known as the Statewide Payables List.

(2) Ordinance Fine Schedules. Each district court may establish, under a process approved by the Judicial Council, a fine for any ordinance that may be paid in lieu of a court appearance by the defendant.

Subd. 3. Fine Payment. A defendant must be advised in writing before paying a fine to a violations bureau that payment constitutes a plea of guilty to the charge and an admission that the defendant understands and waives the right to:

- a. a court or jury trial;
- b. counsel;
- c. be presumed innocent until proven guilty beyond a reasonable doubt;
- d. confront and cross-examine all witnesses; and
- e. remain silent or testify for the defense.

(Amended effective January 1, 2012; amended effective August 1, 2012; amended effective November 1, 2014.)

Rule 23.04 Certification as a Petty Misdemeanor in a Particular Case

Before trial, the prosecutor may certify a misdemeanor offense as a petty misdemeanor if the prosecutor does not seek incarceration, and seeks a fine at or below the statutory maximum for a petty misdemeanor. Subject to the following exception, certification takes effect only on approval of the court and consent of the defendant. Certification does not require the defendant's consent if the offense is included on the Statewide Payables List on the date of the alleged offense.

(Amended effective August 1, 2012.)

Rule 23.05 Procedure in Petty Misdemeanor Cases

Subd. 1. No Right to Jury Trial. No right to a jury trial exists in a misdemeanor charge certified as a petty misdemeanor under Rule 23.04.

Subd. 2. Right to Public Defender Representation. Upon certification of a misdemeanor as a petty misdemeanor, the defendant is not entitled to representation by the public defender. In cases that require the defendant's consent to certification, and the prosecutor moves for certification, the judge must advise an unrepresented defendant of the right to apply for a public defender.

Subd. 3. General Procedure. A defendant charged with a petty misdemeanor violation is presumed innocent until proven guilty beyond a reasonable doubt. Except as otherwise provided in Rule 23, the procedure in petty misdemeanor cases must be the same as for misdemeanors punishable by incarceration.

Subd. 4. Failure to Appear. If a defendant charged with a petty misdemeanor, or a misdemeanor on the Statewide Payables List that is certified as a petty misdemeanor, fails to appear or respond as directed on the citation, complaint, or by the court, a guilty plea and conviction may be entered, the payable fine amount no greater than the maximum fine for a petty misdemeanor, and any applicable fees and surcharges, may be imposed, and the matter referred to collections. Conviction must not be entered until 10 days after the failure to appear.

Subd. 5. Withdrawal of Plea. A defendant convicted under subdivision 4 may move under Rule 15.05 to withdraw the guilty plea and vacate the conviction.

(Amended effective August 1, 2012; amended effective February 1, 2013; amended effective July 1, 2015.)

Rule 23.06 Effect of Conviction

A petty misdemeanor is not considered a crime.

Comment - Rule 23

The definition of petty misdemeanor as used in Rule 23 is broader than the definition provided by Minnesota Statutes, section 609.02, subdivision 4a, which refers to a statutory violation punishable only by a fine of not more than the specified amount. Under Rule 23.01, read in conjunction with the definition of "misdemeanor" in Rule 1.04(a), the term "petty misdemeanor" refers also to violations of local ordinances, charter provisions, rules, or regulations.

These rules do not specify any procedures or sanctions for enforcing payment of fines in petty misdemeanor cases. Existing law permits some enforcement methods. The court may delay acceptance of a plea until the defendant has the money to pay the fine. If a defendant is unable to pay a fine when imposed, the court may set a date by which the defendant must either pay the fine or reappear in court. If the fine is not paid by the date set and the defendant does not reappear as ordered to explain why it has not been paid, the court may issue a bench warrant for the defendant's arrest and set bail in the amount of the fine. Any bail collected could then be used under Minnesota Statutes, section 629.53, to pay the fine. Contempt procedures under Minnesota Statutes, chapter 588, can also be used to enforce payment of a fine when the defendant has willfully refused payment. An administrative sanction may exist if the defendant has failed to pay a fine imposed upon conviction of violating a law regulating the operation or parking of motor vehicles. In such cases, the commissioner of public safety is required under Minnesota Statutes, section 171.16, subdivision 3, to suspend the defendant's license for 30 days or until the fine is paid if the court determines that the defendant has the ability to pay the unpaid fine. Similar sanctions for non-traffic offenses might prove effective, but would require legislative action.

Rule 23.02, which deems a conviction a petty misdemeanor if the sentence imposed is within petty misdemeanor limits, is similar to Minnesota Statutes, section 609.13, which provides for the

reduction of a felony to a gross misdemeanor or misdemeanor and for the reduction of a gross misdemeanor to a misdemeanor.

For uniformity in fines imposed for certain misdemeanors throughout the state, see Minnesota Statutes, section 609.101, subdivision 4.

The written advice required by Rule 23.03, subd. 3 may be included upon the citation issued for the offense. This citation may be set forth in the form of an envelope for mailing the fine to the bureau. This rule does not require a defendant to sign a written plea of guilty.

See also Rule 5.04 as to appointment of counsel upon request of the defendant or interested counsel when the prosecution is for a misdemeanor not punishable by incarceration.

*Contrary to what Rule 23.04 provides, Minnesota Statutes, section 609.131, enacted by the legislature in Minnesota Laws 1987, chapter 329, section 6, purports to allow the reduction of any misdemeanor to a petty misdemeanor without the defendant's consent. The Advisory Committee is aware of this statute, but after consideration rejected fully conforming the Rule to the statute. On these matters of procedure, the Rules of Criminal Procedure take precedence over statutes to the extent any inconsistency exists. *State v. Keith*, 325 N.W.2d 641 (Minn. 1982).*