

Rule 27. Sentence and Judgment**Rule 27.01 Conditions of Release**

After conviction but before sentencing, the court may continue or alter the terms of release, or the court may confine the defendant. The factors in Rule 6.02, subds. 1 and 2 apply, but the defendant bears the burden of showing the defendant will not flee and is not a danger to others.

Rule 27.02 Presentence Investigation in Misdemeanor and Gross Misdemeanor Cases

The court may permit that an oral presentence report be given in misdemeanor and gross misdemeanor cases. If an oral report is given, the parties must be permitted to hear it.

(Amended effective August 1, 2012.)

Rule 27.03 Sentencing Proceedings

Subd. 1. Hearings. Sentencing hearings must be held as provided by law:

(A) Misdemeanor and Gross Misdemeanor Hearings. Before the sentencing proceeding in a misdemeanor or gross misdemeanor case:

(1) Either party is permitted to contest any part of an oral presentence investigation. The court may continue the hearing to give the parties this opportunity.

(2) A party must notify the opposing party and the court if the party intends to present evidence to contest any part of the presentence investigation.

(B) Felony Sentencings

(1) Within three days of a plea or finding or verdict of guilty in a felony case, the court may:

(a) order a presentence investigation and set a date for its return;

(b) order a mental or physical examination of the defendant;

(2) Within the same three days, the court must:

(a) order completion of a sentencing guidelines worksheet;

(b) set a date for sentencing;

(c) order the defendant to appear on the sentencing date.

(3) If the court intends to consider a mitigated departure from the sentencing guidelines, the court must advise the parties. This notice may be given when the presentence investigation is completed or when the presentence investigation is forwarded to the parties.

(4) The presentence investigation report, if ordered, must conform to Minnesota Statutes, section 609.115, subdivision 1, and include a sentencing guidelines worksheet and any other information the court ordered included.

(5) The court, or the probation officer at the court's direction, must forward the guidelines worksheet and the presentence investigation report to the parties. Confidential sources of information must not be included in the presentence investigation report unless the court otherwise directs. The presentence investigation report must not be disclosed to the public without a court order.

(6) Any party may move for a sentencing hearing after receipt of the presentence investigation and guidelines worksheet.

(a) The motion must be served on the opposing party and filed with the court.

(b) The motion must be served and filed no later than eight days before the hearing, but if the presentence investigation is received less than eight days before the sentencing date, then the motion must be served and filed within a reasonable time.

(c) The court may continue a sentencing hearing to accommodate a sentencing motion.

(d) The motion must state the reasons for the hearing, including the portion of the presentence investigation or worksheet being challenged, and include any affidavits or other documents supporting the motion.

(e) Opposing counsel must serve and file a reply no later than three days before the sentencing hearing.

(7) At the sentencing hearing:

(a) The contested sentencing motions must be heard.

(b) The parties may raise other sentencing issues.

(c) The court must allow the record to be supplemented with relevant testimony.

(d) The court may make findings of fact and conclusions of law on the record or, if in writing, within 20 days of the hearing.

(e) If the court determines the guidelines worksheet or supplement is wrong, the court may order a corrected worksheet submitted to the Sentencing Guidelines Commission.

(8) The court may impose sentence immediately following the conclusion of the sentencing hearing.

Subd. 2. Defendant's Presence.

(A) The defendant must be present at the sentencing hearing and sentencing, unless excused under Rule 26.03, subd. 1(3).

(B) If the defendant is disabled in communication, a qualified interpreter must be present.

(C) A corporation may be sentenced in the absence of counsel if counsel fails to appear, after notice, at sentencing.

Subd. 3. Statements at Time of Sentencing. Before pronouncing sentence, the court must allow statements from:

(A) the prosecutor, victim, and defense counsel concerning any sentencing issues and a recommended sentence;

(B) persons on behalf of the defendant;

(C) the defendant, personally.

The court must not accept any off-the-record communications relating to sentencing unless the contents are disclosed to the parties.

Subd. 4. Sentencing. When pronouncing sentence the court must:

(A) State precisely the terms of the sentence.

(B) State the number of days spent in custody in connection with the offense or behavioral incident being sentenced. That credit must be deducted from the sentence and term of imprisonment and must include time spent in custody from a prior stay of imposition or execution of sentence.

(C) If the court imposes a departure from the sentencing guidelines, the court must make findings of fact supporting the departure. The grounds for departure must be: (a) stated in the sentencing order; or (b) recorded in the departure report as provided by the sentencing guidelines commission and attached to the sentencing order required under subdivision 7. The sentencing order and any attached departure report must be filed with the commission within 15 days after sentencing.

(D) If the court is considering a departure from the sentencing guidelines, and no contested sentencing hearing was held, and no notice was given to the parties that the court was considering a departure, the court must allow either party to request a sentencing hearing.

(E) If the court stays imposition or execution of sentence:

(1) The court must state the length of the stay.

(2) In felony cases, the court must tell the defendant that noncustodial probation time will not be credited against a future prison term if the stay is revoked.

(3) If lawful conduct could violate the defendant's terms of probation, the court must tell the defendant what that conduct is.

(4) A written copy of the terms of probation must be given to the defendant at sentencing or as soon as possible afterwards.

(5) The court must inform the defendant that if the defendant disagrees with the probation agent concerning the terms and conditions of probation, the defendant may return to court for clarification.

Subd. 5. Right of Appeal. After sentencing, the court must tell the defendant of the right to appeal both the conviction and sentence, and, if eligible, of the right to appeal at state expense by contacting the state public defender.

Subd. 6. Record. A verbatim record must be made of the sentencing proceedings. If either party requests a transcript, it must be prepared within 30 days of a written request. The party requesting the transcript must pay for it and must make satisfactory arrangements for payment.

Subd. 7. Sentencing Order. When the court pronounces sentence for any counts for which the offense level before sentencing was a felony or gross misdemeanor, the court must record the sentence using an order generated from the court's case management system. This order must at a minimum contain:

(1) the defendant's name;

(2) the case number;

(3) for each count:

(a) if the defendant pled guilty or was found guilty:

- i. the offense date;
 - ii. the statute violated;
 - iii. the pronouncements made under subdivision 4 (precise terms of sentence including any fine, time spent in custody, whether the sentence is a departure and if so, the departure reasons, whether the defendant is placed on probation and if so, the terms and conditions of probation);
 - iv. the level of sentence;
 - v. any restitution ordered, and whether it is joint and several with others;
- (b) if the defendant did not plead guilty or was not found guilty, whether the defendant was acquitted or the count was dismissed;
- (4) any court costs, library fee, treatment evaluation cost or other financial charge;
- (5) other administrative information determined by the State Court Administrator to be necessary to facilitate transmission of the sentence to the Bureau of Criminal Apprehension, the Commissioner of Corrections, county jails, or probation services;
- (6) the judge's signature.

The sentencing order must be provided in place of the transcript required by Minnesota Statutes, sections 243.49 and 631.41.

Subd. 8. Judgment. The record of a judgment of conviction must contain the plea, verdict, adjudication of guilt, and sentence. If a defendant is found not guilty or is otherwise discharged, judgment must be entered accordingly. A sentence or stay of imposition of sentence is an adjudication of guilt.

Subd. 9. Correction or Reduction of Sentence. The court may at any time correct a sentence not authorized by law. The court may modify a sentence during a stay of execution or imposition of sentence if the court does not increase the period of confinement.

Subd. 10. Clerical Mistakes. Clerical mistakes in a judgment, order, or in the record arising from oversight or omission may be corrected by the court at any time, or after notice if ordered by the court.

(Amended effective July 1, 2010; amended effective July 1, 2015.)

Rule 27.04 Probation Revocation

Subd. 1. Initiation of Proceedings.

(1) Warrant or Summons.

(a) Probation revocation proceedings must be initiated by a summons or warrant based on a written report, signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, showing probable cause to believe a probationer violated probation.

(b) The court must issue a summons unless the court believes a warrant is necessary to secure the probationer's appearance or prevent harm to the probationer or another. If the probationer fails to appear on the summons, the court may issue a warrant.

(2) Contents. The warrant or summons must include:

- (a) the name of the probationer;

- (b) a description of the sentence and the probationary terms allegedly violated;
- (c) the judge's signature;
- (d) a factual statement supporting probable cause to believe the probationer violated the terms of probation;
- (e) the amount of bail or other conditions of release the court may set on the warrant;
- (f) for a warrant, an order directing that the probationer be brought before the court promptly, and in any event not later than 36 hours after arrest, not including the day of arrest;
- (g) for a summons, an order directing the probationer to appear at a specific date, time, and place.

(3) Execution, Service, Certification of Warrant or Summons. Execution, service, and certification of the warrant or summons are as provided in Rule 3.03.

Subd. 2. First Appearance.

- (1) When the probationer initially appears on the warrant or summons the court must:
 - (a) Appoint an interpreter if the probationer is disabled in communication.
 - (b) Give the probationer a copy of the violation report, if not already provided.
 - (c) Tell the probationer of the right to:
 - a. a lawyer, including an appointed lawyer if the probationer cannot afford a lawyer;
 - b. a revocation hearing to determine whether clear and convincing evidence of a probation violation exists and whether probation should be revoked;
 - c. disclosure of all evidence used to support revocation and of official records relevant to revocation;
 - d. present evidence, subpoena witnesses, and call and cross-examine witnesses, except the court may prohibit the probationer from confrontation if the court believes a substantial likelihood of serious harm to others exists;
 - e. present mitigating evidence or other reasons why the violation, if proved, should not result in revocation;
 - f. appeal any decision to revoke probation.
- (2) Appointment of Counsel. Rule 5.04 governs the appointment of counsel for a probationer unable to afford counsel.
- (3) Conditions of Release.
 - (a) A probationer may be released pending the revocation hearing.
 - (b) The conditions of release must consider the factors found in Rule 6.02 and the risk the probationer will flee or pose a danger to any person or the community.
 - (c) The probationer bears the burden of establishing no risk of flight or danger to any person or the community.
- (4) Time of Revocation.

(a) The revocation hearing must be held within a reasonable time.

(b) If the probationer is in custody because of the violation report, the hearing must be within seven days.

(c) If the violation report alleges a new crime, the revocation hearing may be postponed pending disposition of the criminal case. If the revocation hearing is not postponed, any testimony the probationer gives at the revocation hearing is not admissible against the probationer at a criminal trial arising from the alleged crime, except for impeachment purposes, or if the probationer is charged with the crime of perjury based on this testimony.

(5) Record. A verbatim record must be made of the probationer's initial appearance.

Subd. 3. Revocation Hearing.

(1) Procedure. The revocation hearing must be conducted consistent with the rights outlined in subdivision 2(1)(c)a.-e. above.

(2) Findings.

(a) No Violation. If the court finds no violation of the conditions of probation, the proceedings must be dismissed and the probationer continued on probation under the terms previously ordered.

(b) Violation Found. If the court finds or the probationer admits a probation violation, the court may:

(i) continue an existing stay of imposition and order probation as provided in Minnesota Statutes, section 609.135;

(ii) impose sentence but stay execution and order probation as provided in Minnesota Statutes, section 609.135;

(iii) impose and execute a sentence;

(iv) continue an existing stay of execution and order probation as provided in Minnesota Statutes, section 609.135;

(v) execute a sentence.

(3) Record. A verbatim record must be made of the probation revocation hearing. If a contested revocation hearing is held, the court must make written findings of fact, including a summary of the evidence relied on in reaching a revocation decision and the basis for the court's decision.

(4) Appeal.

(a) The defendant or the prosecutor may appeal the revocation decision.

(b) Rule 28.05 governs the appeal, except that if an appellant files a notice of appeal within 90 days of the revocation hearing, the appellant's brief must be identified as a probation revocation brief and must be filed within 30 days after delivery of the transcript; or for a self-represented party who requests a paper copy of a transcript under subdivision 2(a), Rule 110.02 of the Rules of Civil Appellate Procedure, 30 days after the date of the notice regarding the availability of the transcript, with three days added to the briefing period measured from the date of the court reporter's notice to that party.

(c) The Minnesota Rules of Civil Appellate Procedure govern preparation of the transcript.

(Amended effective November 1, 2014; amended effective July 1, 2015; amended effective October 8, 2021.)

Rule 27.05 Pretrial Diversion

Subd. 1. Agreements.

(1) A prosecution may be suspended for a specified time and then dismissed under subdivision 6 if:

(a) the agreement is in writing and signed by the parties;

(b) the victim's views are considered;

(c) the court consents;

(d) the court finds a substantial likelihood of conviction and that the benefits of rehabilitation outweigh the harm to society from suspending prosecution.

(2) The agreement must provide that the defendant not commit a new crime or petty misdemeanor and that the defendant waive the right to a speedy trial.

In addition, the agreement may:

(a) include stipulations of fact or of the admissibility of specified testimony, other evidence, and depositions if the diversion agreement is terminated and the case is tried;

(b) provide for any term a court could impose as a condition of probation except the defendant may not be incarcerated as a condition of diversion.

(3) Limitations. The agreement cannot suspend prosecution longer than the period of probation the court could impose if the defendant were convicted. The agreement cannot include a condition the court could not impose as a condition of probation.

Subd. 2. Filing of Agreement; Release. If a diversion agreement is reached, the prosecutor must file the agreement along with a statement suspending the prosecution for a specified time with the court. The defendant must be released when the agreement is filed.

Subd. 3. Modification. The parties, with the court's approval, may agree to modify the terms of the diversion.

Subd. 4. Termination of Agreement and Resumption of Prosecution.

(1) Defendant's Notice. The defendant may terminate the agreement by filing a termination notice with the court. The prosecution will then proceed.

(2) Prosecutor's Motion. The court may terminate the agreement on the prosecutor's motion if the court finds:

a. the defendant or defense counsel misrepresented material facts affecting the agreement and the prosecutor moves to terminate the agreement within six months after it commences; or

b. the defendant has committed a material violation of the agreement, and the prosecutor makes the motion no later than one month after the suspension period specified in the agreement expires.

(3) Issuance of Warrant or Summons. The court may order the defendant's arrest and prompt appearance for the hearing on the prosecutor's motion if the court, based on affidavit, written statement signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, or testimony, finds:

(a) probable cause exists to believe the defendant committed a material violation of the agreement; and

(b) a substantial likelihood exists that the defendant will not appear at a termination hearing.

In lieu of a warrant, the court may issue a summons ordering the defendant to appear.

Subd. 5. Release Status upon Resumption of Prosecution. If the agreement is terminated, the defendant must return to the release status in effect before the agreement, unless the court alters those terms under Rule 6.

Subd. 6. Termination of Agreement and Dismissal of Charges.

(A) Automatic Dismissal. The charges must be dismissed one month after the suspension period specified in the agreement expires unless the prosecutor earlier moved to terminate the agreement.

(B) Dismissal of Motion. If the court denies the motion to resume prosecution, and the specified suspension time has elapsed, the charges must be dismissed.

(C) Effect of Dismissal. If the court dismisses the charge under this rule, the defendant cannot be prosecuted for it.

Subd. 7. Termination and Dismissal on a Showing of Rehabilitation. The court may terminate the agreement, dismiss the charges, and prohibit further prosecution if:

(1) a party moves for termination and provides facts supporting it;

(2) the court gives the parties an opportunity to be heard;

(3) the court finds the defendant has not committed any additional offenses; and

(4) the court finds the defendant appears to be rehabilitated.

Subd. 8. Modification or Termination. If the court finds the prosecutor obtained the defendant's agreement to diversion because of a material misrepresentation by the prosecutor or a person covered by Rule 9.01, subd. 1a(1), the court may:

(1) modify the parts of the agreement related to the misrepresentation; or

(2) if justice requires, terminate the agreement and prohibit further prosecution of the charge.

(Amended effective July 1, 2015.)

Comment - Rule 27

Minnesota Constitution, article I, section 7, provides that all persons before conviction must be bailable by sufficient sureties. The defendant is not entitled to bail as a matter of right after conviction.

If pursuant to Rule 27.02 a presentence report is prepared, the officer conducting the investigation is required by Minnesota Statutes, sections 609.115, subdivision 1, and 611A.037, to

advise the victim of the crime concerning the victim's rights under those statutes and under Minnesota Statutes, section 611A.038. Those rights include the rights to request restitution and to submit an impact statement to the court at sentencing.

The sentencing hearings "as provided by law" under Rule 27.03, subd. 1 would include restitution proceedings under Minnesota Statutes, sections 611A.04 and 611A.045.

Rule 27.03, subd. 1(B)(5), contemplates that the court or the probation officer will provide the parties with a copy of a filed presentence investigation report via electronic transmission or access. Since the advent of the Minnesota Rules of Criminal Procedure, there have been counties in which "confidential portions" of presentence investigation reports were not forwarded to the parties, and were made available to the parties by in-court inspection only. The 2015 amendment to the rule provides that any presentence investigation report filed with the court must also be forwarded to the parties without separation into "nonconfidential" or "confidential" portions, or redaction by the court. If the probation officer has any "confidential sources of information" to disclose (see Minnesota Statutes, section 609.115, subdivision 4), that information must not be contained in the presentence investigation report that is filed with the court, and must be disclosed to the court in a separately filed document or in an in-chambers hearing.

The Sentencing Guidelines Commission recommends that when the felony being sentenced involves a sexual offense, the trial court should order a physical or mental examination of the offender as a supplement to the presentence investigation permitted by Minnesota Statutes, section 609.115. Minnesota Sentencing Guidelines and Commentary, Training Material, 3. E. Rule 27.03, subd. 1(B) permits the court to order these examinations. This rule does not preclude a post-sentence investigation whenever required by statute (Minnesota Statutes, section 609.115, subdivision 2 (sentence of life imprisonment)) or whenever the court considers one necessary. The presentence investigation may include the information obtained on the pretrial release investigation under Rule 6.02, subd. 3. If a defendant is convicted of a domestic abuse offense as defined by Minnesota Statutes, section 609.2244, subdivision 1, a presentence domestic abuse investigation must be conducted. A report must then be submitted to the court that meets the requirements in Minnesota Statutes, section 609.2244, subdivision 2.

The Advisory Committee strongly commends the practice, now in effect in some counties, of preparing the Sentencing Guidelines Worksheet before the Omnibus Hearing. This may be done in connection with a pre-release investigation under Rule 6.02, subd. 3 and may later be included with any presentence investigation report required under Rule 27.03, subd. 1.

The date for the return of the presentence investigation report should be set sufficiently in advance of sentencing to allow counsel sufficient time to make any motion under Rule 27.03, subd. 1(B)(6). The officer conducting the presentence investigation is required by Minnesota Statutes, sections 609.115 and 611A.037, to advise any victim of the crime concerning the victim's rights under those statutes and under Minnesota Statutes, section 611A.038. Those rights include the rights to request restitution and to submit an impact statement to the court at sentencing.

Rule 27.03, subd. 1(B)(7) is in accord with Minnesota Statutes, section 244.10, subdivision 1, which requires that the court issue written findings of fact, conclusions of law and appropriate order on the issues raised at the sentencing hearing at the conclusion of the hearing or within 20 days afterwards.

In Rule 27.03, subd. 1(B)(8) the term "sentencing hearing" refers to the hearing required by Minnesota Statutes, section 244.10, subdivision 1, on issues of sentencing. In the usual case, actual sentencing should immediately follow.

Minnesota Statutes, section 611A.06, requires the Commissioner of Corrections or other custodial authority to notify the victim of the crime when an offender is to be released from imprisonment. Minnesota Statutes, section 611A.0385, further requires that the court or its designee shall at the time of the sentencing make reasonable good faith efforts to inform any identifiable victims of their right to such notice under Minnesota Statutes, section 611A.06.

Minnesota Statutes, section 244.10, subdivision 2, requires written findings of fact as to the reasons for departure from the sentencing guidelines. The court's statement into the record under Rule 27.03, subd. 4(C), should satisfy this requirement, but the rule further requires that the reasons for departure must be stated in a sentencing order or in a departure report attached to the sentencing order. Whichever document is used, it must be filed with the sentencing guidelines commission within 15 days of the date of the sentencing.

Rule 27.03, subd. 4(D) is designed to eliminate any possible due process notice problems where a defendant does not request a sentencing hearing because of an expectation of receiving a sentence in conformance with the sentencing guidelines. It is also anticipated that fewer sentencing hearings will be requested by the prosecution and defense so long as an opportunity exists to request such a hearing after notice that the court might depart from the guidelines.

*Rule 27.03, subd. 4(E) avoids any due process notice problems if the court revokes probation and executes the sentence. Except as provided in Minnesota Statutes, section 609.135, subdivision 7, a defendant has a right to refuse probation when the conditions of the probation are more onerous than a prison sentence, *State v. Randolph*, 316 N.W.2d 508 (Minn. 1982).*

*Rule 27.04 does not require an initial probable cause hearing on the probation violation report. The hearing is not constitutionally required if the defendant is not in custody or if the final revocation hearing is held within the time that the preliminary hearing would otherwise be required. *Pearson v. State*, 308 Minn. 287, 241 N.W.2d 490 (1976). It is, however, necessary under Rule 27.04, subd. 1(2) that the defendant be brought before the court after arrest within the same time limits as set forth under Rule 3.02, subd. 2 for arrests upon warrant.*

If the violation report alleges multiple bases for probation revocation, one of which is an allegation of new criminal conduct, the limited use immunity in Rule 27.04, subd. 2(4)(c), attaches only at the criminal trial arising from the allegation of a new crime.

Rule 27.05 (Pretrial Diversion) does not preclude the prosecutor and defendant from agreeing to diversion of a case without court approval if charges are not pending before the court. The requirement in Rule 27.05, subd. 1(1) that the prosecutor give due consideration of the victim's views is in accord with the requirement in Minnesota Statutes, section 611A.031, that the prosecuting attorney "make every reasonable effort to notify and seek input from the victim" before employing pretrial diversion for certain specified offenses.

With the approval of the court, the pretrial diversion agreement may provide for any term a court could impose as a condition of probation, including restitution. See Minnesota Statutes, sections 611A.04 and 611A.045, as to requiring restitution as part of a sentence.

Under Rule 27.05, subd. 1(3), no condition may be included in the pretrial diversion agreement that could not be imposed upon probation after conviction of the crime charged. See Minnesota Statutes, section 609.135, as to the permissible conditions of probation. See Minnesota Statutes, section 611A.031, regarding the prosecutor's duties under the Victim's Rights Act, for certain designated offenses, to make every reasonable effort to notify and seek input before placing a person into a pretrial diversion program.