

RULE CHANGE 2015(04)

COLORADO RULES OF CRIMINAL PROCEDURE

Rule 32. Sentence and Judgment

(a) Presentence or Probation Investigation.

(1) When INVESTIGATION AND REPORT REQUIRED, ~~and How Made.~~

(I) IN GENERAL. ~~In any felony case where the court has discretion as to the punishment and on court order in any misdemeanor case, the~~ THE probation officer ~~shall~~ MUST make ~~an~~ A PRESENTENCE investigation and written report to the court before the imposition of sentence or granting of ~~probation.~~ PROBATION:

(a) IN ANY CASE IN WHICH THE DEFENDANT IS TO BE SENTENCED FOR A FELONY AND THE COURT HAS DISCRETION AS TO THE PUNISHMENT, OR

(b) WHEN THE COURT SO ORDERS IN ANY CASE IN WHICH THE DEFENDANT IS TO BE SENTENCED FOR A MISDEMEANOR.

(II) WAIVER. THE COURT, WITH THE CONCURRENCE OF THE DEFENDANT AND THE PROSECUTING ATTORNEY, MAY DISPENSE WITH THE PRESENTENCE INVESTIGATION AND REPORT UNLESS A PRESENTENCE REPORT IS REQUIRED BY STATUTE, INCLUDING BUT NOT LIMITED TO THE REQUIREMENTS OF SECTION 16-11-102(1)(b), C.R.S.

~~An application for probation shall be in writing upon forms furnished by the court, but when the defendant has been convicted of a misdemeanor or class 1 petty offense, the court, in its discretion, may waive the written application for probation.~~

(2) COURT MAY ORDER EXAMINATION. The court, upon its own motion or upon the petition of the probation officer, may order any defendant who is subject to presentence investigation or who has made application for probation to submit to a mental and physical examination.

~~The court, with the concurrence of the defendant and the prosecuting attorney, may dispense with the presentence examination and report unless a presentence report is required by statute, including but not limited to the requirements of section 16-11-102(1)(b).~~

(3) DELIVERY OF REPORT COPIES. THE PROBATION OFFICER MUST PROVIDE COPIES OF THE PRESENTENCE REPORT, INCLUDING ANY RECOMMENDATIONS AS TO PROBATION, TO THE PROSECUTING ATTORNEY AND TO DEFENSE COUNSEL OR THE DEFENDANT IF UNREPRESENTED. THE COPIES MUST BE PROVIDED:

(I) AT LEAST 72 HOURS BEFORE THE SENTENCING HEARING, OR

(II) AT LEAST 7 DAYS BEFORE THE SENTENCING HEARING IF EITHER THE PROSECUTING ATTORNEY, DEFENSE COUNSEL, OR THE DEFENDANT IF UNREPRESENTED, SO REQUESTS OF THE COURT WITHIN 7 DAYS OF THE TIME THE COURT SETS THE DATE FOR THE SENTENCING HEARING. IF THE PROBATION DEPARTMENT INFORMS THE COURT IT CANNOT PROVIDE THE REPORT COPIES AT LEAST 7 DAYS BEFORE THE SENTENCING HEARING, THE COURT MUST GRANT THE PROBATION DEPARTMENT ADDITIONAL TIME TO COMPLETE THE REPORT AND MUST RESET THE SENTENCING HEARING SO THAT IT IS HELD AT LEAST 7 DAYS AFTER THE PROBATION DEPARTMENT PROVIDES THE REPORT COPIES.

~~(2) **Report.** The presentence report shall include, but not be limited to, information as to the defendant's family background, educational history, employment record, and past criminal record, an evaluation of the alternative dispositions available for the defendant, and such other information as the court may require. In addition, the court, as it deems appropriate, may require the presentence report to include the findings and results of a professionally conducted mental and physical examination of the defendant. Within a reasonable time prior to sentencing, copies of the presentence report, including any recommendations as to probation, shall be furnished to the prosecuting attorney and defense counsel or to the defendant if the defendant is unrepresented. The report shall also include a statement showing the amount of time during which the defendant was confined prior to the imposition of sentence for the offense for which the defendant is being sentenced.~~

(b) Sentence and ~~judgment~~ JUDGMENT.

(1) Sentence shall be imposed without unreasonable delay. Before imposing sentence, the court shall afford the defendant an opportunity to make a statement in his or her own behalf, and to present any information in mitigation of punishment. The state also shall be given an opportunity to be heard on any matter material to the imposition of sentence. Alternatives in sentencing shall be as provided by law. WHEN IMPOSING SENTENCE, THE COURT SHALL CONSIDER RESTITUTION AS REQUIRED BY SECTION 18-1.3-603(1), C.R.S.

(2) Upon conviction of guilt of a defendant of a class 1 felony, and after the sentencing hearing provided by law, the trial court shall impose such sentence as is authorized by law. At the time of imposition of a sentence of death, the trial court shall enter an order staying execution of the judgment and sentence until further order of the Supreme Court.

(3) Judgment.

(I) A judgment of conviction shall consist of a recital of the plea, the verdict or findings, the sentence, the finding of the amount of presentence confinement, and costs, if any are assessed against the defendant, the finding of the amount of earned time credit if the defendant had previously been placed in a community corrections program, AN ORDER OR FINDING REGARDING RESTITUTION AS REQUIRED BY SECTION 18-1.3-603, C.R.S., and a statement that the defendant is required to register as a sex offender, if applicable.

(II) IF THE DEFENDANT IS FOUND NOT GUILTY OR FOR ANY OTHER REASON IS ENTITLED TO BE DISCHARGED, JUDGMENT SHALL BE ENTERED ACCORDINGLY.

(III) ALL JUDGMENTS SHALL BE SIGNED BY THE TRIAL JUDGE AND ENTERED BY THE CLERK IN THE REGISTER OF ACTIONS.

(c) Advisement.

(1) Where judgment of conviction has been entered following a trial, the court shall, after passing sentence, inform the defendant of the right to seek review of the conviction and sentence, and the time limits for filing a notice of appeal. The court shall at that time make a determination whether the defendant is indigent, and if so, the court shall inform the defendant of the right to the assistance of appointed counsel upon review of the defendant's conviction and sentence, and of the defendant's right to obtain a record on appeal without payment of costs. In addition, the court shall, after passing sentence, inform the defendant of the right to seek postconviction reduction of sentence in the trial court under the provisions of Rule 35(b).

~~If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. All judgments shall be signed by the trial judge and entered by the clerk in the register of actions.~~

(2) Where judgment of conviction has been entered following a plea of guilty or nolo contendere, the court shall, after passing sentence, inform the defendant that the defendant may in certain circumstances have the right to appellate review of the sentence, of the time limits for filing a notice of appeal, and that the defendant may have a right to seek postconviction reduction of sentence in the trial court under the provisions of Rule 35(b).

(3) WHEN THE COURT IMPOSES A SENTENCE THAT INCLUDES PAYMENT OF ANY MONETARY AMOUNT, THE COURT SHALL INSTRUCT THE DEFENDANT THAT:

(I) IF AT ANY TIME THE DEFENDANT IS UNABLE TO PAY THE MONETARY AMOUNT DUE, THE DEFENDANT MUST CONTACT THE COURT'S DESIGNATED OFFICIAL OR APPEAR BEFORE THE COURT TO EXPLAIN WHY HE OR SHE IS UNABLE TO PAY THE MONETARY AMOUNT; AND

(II) IF THE DEFENDANT HAS THE ABILITY TO PAY THE MONETARY AMOUNT AS DIRECTED BY THE COURT OR THE COURT'S DESIGNEE BUT WILLFULLY FAILS TO PAY, THE DEFENDANT MAY BE IMPRISONED FOR FAILURE TO COMPLY WITH THE COURT'S LAWFUL ORDER TO PAY PURSUANT TO SECTION 18-1.3-702, C.R.S.

(d) - (f) [NO CHANGE]

(g) PROCEEDINGS IN THE EVENT OF FAILURE TO PAY. WHEN A DEFENDANT FAILS TO PAY A MONETARY AMOUNT IMPOSED BY THE COURT, THE COURT SHALL FOLLOW THE PROCEDURES SET FORTH IN SECTION 18-1.3-702(3), C.R.S.

Amended and Adopted by the Court, En Banc, May 22, 2015, effective immediately.

By the Court:

Nathan B. Coats
Justice, Colorado Supreme Court