

Alabama Rules of Criminal Procedure

Rule 25. Procedure after verdict or finding of not guilty by reason of mental disease or defect.

Rule 25.8. Release from commitment.

(a) DUTY OF COMMISSIONER. When a defendant has been committed to the custody of the commissioner or a facility as provided by Rule 25.6(b), the commissioner or the facility, as the case may be, may not release such defendant from custody or permit such defendant to be at large without supervision and attendance unless authorized to do so by court order.

(b) APPLICATION FOR RELEASE. Upon receipt by the court of a motion from the defendant, a motion on behalf of the defendant, or a motion from the commissioner, alleging that the defendant is no longer mentally ill or no longer poses a real and present threat of substantial harm to himself or others by being at large, or no longer poses a real and present threat of substantial harm to himself or to others by being at large if certain conditions are imposed upon the defendant's release, and accompanied by the certification of a mental health expert stating that, in the expert's opinion, those allegations are correct, the court shall give notice to the district attorney (who shall then notify the victim pursuant to Ala.Code 1975, § 15-14-50 et seq.), the commissioner, and the regional or community mental health facility which is or may be involved if the defendant is released, and the defendant, the defendant's guardian, or the defendant's attorney, and unless an order of release is stipulated by the parties with consent of the court, shall hold a hearing to determine whether said defendant is still mentally ill or still poses a real and present threat of substantial harm to himself or to others. The court may not be required to give notice or to hold a hearing on such motion for any defendant more frequently than every six (6) months. The court shall conduct the hearing without empaneling a jury.

(c) DUTY OF DEPARTMENT TO GIVE NOTICE. Whenever the department or facility with custody of a defendant is of the opinion that the defendant is no longer mentally ill, or that the defendant no longer poses a real and present threat of substantial harm to himself or to others by being at large, or no longer poses a real and present threat of substantial harm to himself or to others by being at large if certain conditions are imposed upon the defendant's release, the department or facility, as the case may be, shall give notice of that opinion to the court in writing. The department or the facility, as the case may be, shall contemporaneously send copies of that notice to the district attorney (who shall notify the victim pursuant to § 15-14-50 et seq.), the regional or community mental health facility which is or may be involved if the defendant is released, and the defendant, the defendant's guardian, or the defendant's attorney. The notice may include a conditional release plan if the department or facility deems such a plan appropriate.

(d) DATE OF HEARING; NOTICE. The court shall set a hearing to be held within thirty (30) days of its receipt of the motion or notice described in Rule 25.8(b) and (c), respectively, unless an order of release either with or without conditions is stipulated by the department and all the parties to whom notice is required to be given in Rule 25.8(b) and (c). The court shall give notice of the date of that hearing to the department and to all the parties to whom notice is required to be given in Rule 25.8(b) and (c).

(e) RELEASE OF DEFENDANT UPON FAILURE TO HOLD HEARING. If a hearing is not held within sixty (60) days of receipt by the court of the notice described in Rule 25.8(c) (not simply upon application for release as provided in Rule 25.8(b)), the defendant shall be released forthwith unless, for good cause shown, the hearing is continued for a reasonable time.

(f) DETERMINATION AS TO CONDITION OF DEFENDANT. If, after conducting the hearing, the court determines that the defendant is no longer mentally ill or no longer poses a real and present threat of substantial harm to himself or to others by being at large, the court shall order the defendant's release. If the court determines that the defendant is still mentally ill but no longer poses a real and present threat of substantial harm to himself or to others by being at large if the defendant's release is accompanied by certain conditions, the court shall order his release subject to those conditions necessary to prevent the defendant from posing a real and present threat of substantial harm to himself or to others.

(g) COURT-IMPOSED CONDITIONS FOR RELEASE. The conditions that the court may impose upon release, if necessary and appropriate, include the following:

(1) That the defendant take medication as prescribed by doctors in the department or in a regional or community mental health facility, or by some other doctor whose care the defendant is in.

(2) That the defendant submit to treatment and accept care from a duly authorized outpatient facility such as a regional or community mental health facility;

(3) That the defendant submit to mental or medical evaluation or testing as prescribed by the Department, by a regional or community mental health facility, or by other appropriate person or facility;

(4) That the defendant submit to periodic or random drug testing designed to ensure that the defendant is taking any prescribed drugs and avoiding any proscribed drugs, including alcohol;

(5) That the defendant avoid specified activities, persons, or places that may be detrimental to the defendant's condition; and

(6) Any other appropriate condition that is necessary to prevent the defendant from posing a real and present threat of substantial harm to himself or to others while the defendant is at large.

If conditional release is ordered, the court shall state in its order the specific conditions to be followed by the defendant. The order shall also direct the appropriate agencies or persons to submit periodic reports to the court regarding the defendant's compliance with the conditions of release and progress in treatment, with copies to the district attorney, to the defendant or defendant's guardian or counsel, and to the individual or institution from which the defendant is released. Such reports shall not be deemed to be a violation of any doctor-patient, psychiatrist-patient, or psychologist-patient privilege.

(h) MODIFICATION OF RELEASE CONDITIONS. If at any time it appears that the defendant has failed to comply with the conditions of release, that the defendant's condition has deteriorated to the point that inpatient care is required, or that the release conditions should be modified, the court may, after a hearing, modify the release conditions or order the defendant returned to the department for further treatment. All such hearings shall be preceded by notice to the department and to the parties required to be notified in Rule 25.8(b) and (c). All such modifications shall be guided by the standard of whether such modifications are necessary to ensure that the defendant does not pose a real and present threat of substantial harm to himself or to others.

(i) REMOVAL OF CONDITIONS OF RELEASE. If at any time after a defendant has been conditionally released, it appears that removal of some or all of the conditions will not cause the defendant to pose a real and present threat of substantial harm to himself or to others by being at large, the court, after a hearing, shall remove the unnecessary conditions, or it shall order the defendant released unconditionally and terminate its jurisdiction over the case, as the case may be. All such hearings shall be preceded by notice to the department and to the parties required to be notified in Rule 25.8(b) and (c).

Committee Comments

Rule 25.8 contains the provisions of the Criminal Psychopath Release Restriction Act, Ala.Code 1975, §§ 15-16-60 through 15-16-71. In passing this Act in 1988, the legislature directed that a defendant who is involuntarily committed not be released without a court order. This rule is taken substantially from the Criminal Psychopath Release Restriction Act. Rule 25.8(b) allows the defendant or someone on his behalf or the commissioner to move the court to release him either conditionally or unconditionally. If he is released with conditions, the court continues to have jurisdiction over the case until, under Rule 25.8(i), the court terminates its jurisdiction.

Provision is also made for the district attorney to give notice of any hearing to the victim. This is pursuant to the Crime Victims' Court Attendance Act, Ala.Code 1975, § 15-14-50 et seq., which provides that the victim shall be afforded a reasonable opportunity to attend any trial or hearing which in any way pertains to the case.