

Alabama Rules of Criminal Procedure

Rule 26. Judgment; presentence report; sentence hearing; sentence.

Rule 26.3. Presentence report.

(a) WHEN REQUIRED.

(1) *All offenses.* The court may require a presentence report in all cases in which it has either discretion over the penalty to be imposed or authority to suspend execution of the sentence.

(2) *Felony offenses.* On motion of the court or written motion of either party, the court shall require a written report of a presentence investigation of a defendant convicted of a felony, and such defendant shall not be sentenced or otherwise disposed of before such report has been presented to and considered by the court.

(b) CONTENT. The presentence report may contain:

(1) A statement of the offense and the circumstances surrounding it;

(2) A statement of the defendant's prior criminal and juvenile record, if any;

(3) A statement of the defendant's educational background;

(4) A statement of the defendant's employment background, financial condition, and military record, if any;

(5) A statement of the defendant's social history, including family relationships, marital status, interests, and activities, residence history, and religious affiliations;

(6) A statement of the defendant's medical and psychological history, if available;

(7) Victim Impact Statements; and

(8) Any other information required by the court.

(c) AVAILABILITY OF REPORT. Copies of the presentence report shall be made available or furnished to the court, the district attorney, and the attorney for the defendant or the defendant, if not represented by counsel, prior to the sentence hearing.

**Committee Comments to Rule 26.3 as Amended
Effective April 16, 2010**

Rule 26.3 expands on the provisions of Ala. Code 1975, § 13A-5-5, relating to presentence investigation reports. This rule refers to the filing, contents, and availability of presentence (as opposed to postsentence) investigation reports and is consistent with the provisions of § 13A-5-5 requiring a presentence investigation prior to sentencing a convicted felon if requested by written motion of either party or by the court's own motion. Section 13A-5-5, as amended by Act No. 2006-218, effective March 10, 2006, contains these same provisions for the availability of presentence investigation reports, but also requires that either a presentence or postsentence investigation report be completed and on file for every convicted felon and that these reports must be in electronic format (referred to as E-PSIs). A fundamental principle that underlies sentencing is that "rational and consistent sentencing decisions cannot be achieved without a reliable information base that provides the sentencing court with both an accurate and a relatively uniform volume of information about all offenders." Comment to ABA Standards for Criminal Justice, *Sentencing Alternatives and Procedures* 18-5.1 (2d ed. 1986). The sentencing process is crucial in the criminal process. "[E]very lawyer engaged in defending criminal cases knows that often a finding of guilt is a foregone conclusion, and that the real issue centers about the severity of the punishment." *Smith v. United States*, 233 F.2d 750, 754 (5th Cir. 1955). In jurisdictions which have used the presentence investigation report, it has proven to be a thorough and efficient method of compiling most of the information that is essential to an informed sentencing decision. § 7.07, Comment to Model Penal Code (Tent. Draft No. 2, 1954).

Generally, a presentence report should be prepared only after the determination of guilt, so as to avoid, insofar as possible, placing the defendant in a position where the defendant is expected to disclose to the probation officer facts about the offense that are not being disclosed at trial. An exception is made in cases in which the defendant intends to plead guilty and requests that the presentence report be prepared prior to the Rule 14.3 plea agreement hearing so that all matters may be completed at one proceeding. In the event that a new trial is ordered or a plea withdrawn after preparation of the presentence report, neither the report nor any statement made in connection with its preparation may be introduced at trial. See ABA, Standards for Criminal Justice, *Sentencing Alternatives and Procedures* 18-5.2(b) (2d ed. 1986); Rule 26.6(b)(2).

Rule 26.3(b), which sets forth what information the presentence report should contain, is based upon Ala.Code 1975, § 15-22-51, Rule 32(c)(2), Fed.R.Crim.P., and ABA, Standards for Criminal Justice, *Sentencing Alternatives and Procedures* 18-5.1 (2d ed. 1986).

Subsection (b)(1) requires a description of the offense and the circumstances surrounding it. Often the trial record will not contain all the facts that should be known in order to frame a proper sentence. For example, the defendant may not have testified as to his version of the offense in court, but that version is of importance when considering the defendant's motivations. On the other hand, it is not intended that facts that were revealed at the trial be excluded, since subsequent users of the report may not have access to the trial record and a description that focuses exclusively on events not in the record might be misleading.

Subsection (b)(2) requires a description of the defendant's prior criminal record, if any. Arrests, juvenile dispositions short of an adjudication, and the like can be extremely misleading and damaging if presented to the court as part of a section of the report which deals with past convictions. If such items are included, a special effort should be made to assure that one using the report cannot possibly mistake an arrest for a conviction. Failure in this respect could leave the sentence imposed subject to attack, since it is violative of due process for the trial court to impose a sentence under the mistaken belief that the defendant was guilty of other crimes and the defendant was not represented by counsel. *Townsend v. Burke*, 334 U.S. 736, 741 (1948).

Subsection (b)(6) requires the defendant's medical and psychological history, if available, to be included. This history refers to information obtained in past examinations and is not to be confused with Rule 26.4, which allows the court to order further mental health examination or diagnostic evaluation.

Judicial discretion is an essential component of fairness in the sentencing process. Judicial discretion provides the sentencing judge with the flexibility to design sentences based on the individual facts in each case. Fairness can only result from informed sentencing decisions that can be achieved through the use of consistently prepared presentence reports, the review and study of sentences of other judges in similar cases, and consistent application of the principles of sentencing set out in Rule 26.8.

Note from the reporter of decisions: The order amending the Committee Comments to Rule 26.3, Alabama Rules of Criminal Procedure, effective April 16, 2010, is published in that volume of *Alabama Reporter* that contains Alabama cases from ___ So. 3d.