

## Alabama Rules of Criminal Procedure

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

*Rule 26.5. Disclosure of the presentence, diagnostic, and physical and mental health reports.*

(a) DISCLOSURE TO THE PARTIES. A copy of all presentence reports, diagnostic reports, and reports of any physical or mental examinations pursuant to Rule 26.3 and Rule 26.4 shall be furnished to the district attorney and to the defendant or the defendant's attorney prior to the sentence hearing.

(b) DISCLOSURE AFTER SENTENCING.

(1) After sentencing, all diagnostic reports, reports of any physical or mental health examinations, and presentence reports shall be furnished to official agencies having legal responsibility for the custody, rehabilitation, treatment, and release of the defendant and to such other persons and agencies as the court may direct.

(2) Neither a presentence report, a diagnostic report, a report of any physical or mental examination, nor any statement made by the defendant in connection with the preparation of any of the above reports shall be admissible as evidence in any proceeding bearing on the issue of the guilt of the defendant.

(c) NO PUBLIC DISCLOSURE. Reports prepared under Rules 26.3 and 26.4 shall not be matters of public record.

### Committee Comments

Rule 26.5(a) is based upon ABA, Standards for Criminal Justice, *Sentencing Alternatives and Procedures* 18-5.4 (2d ed. 1986). The rule not only permits the parties to inspect the reports, but also provides the parties copies of the presentence reports and any physical or mental health and diagnostic reports.

Section (a) also provides for full disclosure of the contents of the presentence report to the district attorney. This requirement is similar to Rule 32(c)(3)(C), Fed.R.Crim.P., which provides that, "Any material disclosed to the defendant or his counsel shall also be disclosed to the attorney for the government."

Subsection (1) of section (b) provides for disclosure of the presentence, physical or mental health, and diagnostic reports to certain persons other than the parties. While the basic purpose of these reports is to assist the court in

making the sentencing decision, the information contained therein will usually be quite helpful to those persons who will thereafter have responsibility for the defendant and therefore should be disclosed to them to avoid duplication of effort.

In order to encourage the defendant to be completely candid with the person preparing the report, subsection (2) ensures that, when a defendant is tried after a presentence report has been prepared, the presentence, physical or mental health or diagnostic reports and any statement made in connection with their preparation are admissible only on the question of the sentence to be imposed.

Section (c) is based on ABA, Standards for Criminal Justice, *Sentencing Alternatives and Procedures* 18-5.3 (2d ed. 1986). While there appears to be no affirmative reason for making the reports public, since section (b) provides for disclosure to all those who would require the information contained therein, a very substantial possibility of detriment to the defendant exists. There is no need to thus invade the defendant's right to privacy by exposing such information to all the world.