

Alabama Rules of Criminal Procedure

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

Rule 26.6. Sentence hearing.

(a) IMPOSITION OF SENTENCE. Except in death penalty cases and in cases involving offenses committed prior to January 1, 1980, the judge shall impose the sentence in all cases. In death penalty cases and in cases involving offenses committed prior to January 1, 1980, the sentence shall be imposed as provided by law.

(b) SENTENCE HEARING.

(1) Unless the court has no discretion as to the penalty to be imposed and no power to suspend execution of the sentence, the court shall conduct a sentence hearing in all felony cases, unless waived by the parties with consent of the court. The sentence hearing may commence immediately after a determination of guilt or may be continued to a later date to be set by the court. If a presentence report is required, the sentence hearing shall not be conducted until copies thereof have been made available or furnished to the court and the parties.

(2) Disputed facts shall be determined by the preponderance of evidence. Evidence may be presented by both the state and the defendant as to any matter that the court deems probative on the issue of sentence. Such matters may include, but are not limited to, the nature and circumstances of the offense, the defendant's character, background, mental and physical condition, and history, the gain derived by the defendant or the loss suffered by the victim as a result of defendant's commission of the offense, and any other facts in aggravation or in mitigation of the penalty. Any evidence that the court deems to have probative value may be received, regardless of its admissibility under the rules of evidence.

(3) Habitual Felony Offenders.

(i) In any case involving an alleged habitual felony offender as provided in Ala.Code 1975, § 13A-5-9, if a hearing is necessary in order to establish the alleged prior conviction or convictions in the record, the court, on its own motion or on a motion of the district attorney or on motion of the defendant, after a determination of guilt, shall hold a hearing at a date to be set by the court.

(ii) At a reasonable time prior to the hearing, the defendant shall be given notice of the prior conviction or convictions upon which the state intends to proceed.

(iii) At the hearing, the burden of proof shall be on the state to show that the defendant has been convicted of a previous felony or felonies. Evidence may be presented by both the state and the defendant as to any matter the court deems relevant to the application of the law. In determining disputed facts, the court shall use the standard of proof beyond a reasonable doubt. If at the hearing the defendant disputes any conviction presented by the state, the court may allow the state to present additional evidence of the disputed conviction, either by way of rebuttal or at a future time to be set by the court. If the state fails to meet its burden of proof to establish one or more prior felony convictions, then the defendant shall not be sentenced as an habitual offender.

(iv) Any conviction in any jurisdiction, including Alabama, shall be considered and determined to be a felony conviction if the conduct made the basis of that conviction constitutes a felony under Act 607, § 130(4), Acts of Alabama 1977, p. 812 (§ 13A-1-2(4), Alabama Criminal Code), or would have constituted a felony under that section had the conduct taken place in Alabama on or after January 1, 1980; and further, a conviction of a crime against the United States shall be considered to be a felony conviction if that crime is punishable by imprisonment in excess of one (1) year under federal law, and was so punishable at the time of its commission, even if the conduct made the basis of that conviction would not be punishable under Alabama law.

Committee Comments

With passage of the Criminal Code effective January 1, 1980, sentencing is by the judge rather than the jury in all but death penalty cases.

In sentencing by the judge, the procedure is fairly simple. After conviction, the judge holds a hearing for the purpose of receiving evidence bearing on the issues of the length and terms of the sentence to impose and whether to grant probation, unless the statute gives no discretion as to either term of sentence or probation. The hearing is set after receipt of a presentence report, if one is required, and after the court receives such relevant evidence as it deems of probative value. The court either then pronounces sentence or reserves sentencing to a later date.

On the other hand, in death penalty cases, the jury must return a sentence verdict unless such verdict is waived. The rule defers to *Beck v. State*, 396 So.2d 645 (Ala.1980), and Ala.Code 1975, §§ 13A-5-39 through 13A-5-59, which set out a procedure for a separate hearing before the jury on the issue of sentence in death penalty cases.

It is desirable that the presentence report be made available or delivered to the court and the parties in advance of the date set for the sentence hearing.