

Alabama Rules of Criminal Procedure

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

Rule 26.11. Fines and restitution.

(a) IMPOSITION OF RESTITUTION. Restitution should be ordered in all cases where a victim has been injured or damaged. The financial resources and obligations of the defendant and the burden that payment of restitution will impose should be considered in determining how much restitution is to be paid or collected, i.e., whether to be paid by installments and what length of time should be given for payment.

(b) IMPOSITION OF FINE. If the court is given authority to impose a fine, in determining whether to impose a fine, the court should consider:

(1) Whether there are particular reasons which make a fine appropriate as punishment for the defendant;

(2) The financial resources and obligations of the defendant and the burden that payment of a fine will impose;

(3) The ability of the defendant to pay a fine forthwith on an installment basis or on other conditions to be fixed by the court;

(4) The extent to which payment of a fine will interfere with the ability of the defendant to make restitution or reparation to the victim of the crime; and

(5) The amount of gain derived by the defendant or loss sustained by the victim as a result of defendant's commission of the offense, which amount shall be determined by the court from evidence presented at the sentence hearing if not stipulated by the parties.

(c) IMPOSITION OF COSTS. Docket fees and other costs in criminal cases shall be assessed upon conviction.

(d) DEFERRED AND INSTALLMENT PAYMENTS. If the defendant cannot pay the costs, fine, and/or restitution immediately after pronouncement of the sentence as preferred, the court may permit payment of the costs, fine, and/or restitution, at some later date, or in specified installments.

(e) TO WHOM PAYMENT IS TO BE MADE. The payment of fines, costs, and monetary restitution shall be made to the clerk of the court, unless the court expressly directs otherwise.

(f) ACTION UPON FAILURE TO PAY FINE OR RESTITUTION.

(1) Defendants Not on Probation. If a defendant not on probation fails to pay a fine or restitution, or any installment thereof, within the prescribed time, the clerk shall notify the district attorney and the court.

(2) Defendants on Probation. If a defendant on probation fails to pay a fine or restitution, or any installment thereof, within the prescribed time, the clerk shall give notice of such delinquency to the defendant's probation officer.

(3) When Payment Is to Be Made to Persons Other than the Clerk. Whether or not the defendant is on probation, if the payment is to be made to someone other than the clerk, the person to whom payment is to be made shall notify the probation officer (if the defendant is on probation) or the court (if the defendant is not on probation) of the defendant's failure to pay.

(g) INQUIRY INTO DEFENDANT'S ABILITY TO PAY FINE OR RESTITUTION. If a defendant fails to pay a fine or restitution as directed, the court may inquire and cause an investigation to be made into the defendant's financial, employment, and family standing, and the reasons for nonpayment of the fine and/or restitution, including whether nonpayment of the fine and/or restitution was contumacious or due to indigency.

(h) REMEDIES FOR NONPAYMENT OF FINE OR RESTITUTION. If the defendant fails to pay a fine and/or restitution, the court may:

(1) Reduce the fine to an amount the defendant is able to pay;

(2) Continue or modify the schedule of payments of the fine and/or restitution;

(3) Direct that the defendant be incarcerated until the unpaid fine and/or restitution, or any portion thereof, is paid, subject, however, to section (i) of this rule;

(4) Order an employer to withhold amounts from wages to pay fines and/or restitution; or

(5) Release the defendant from obligation to pay the fine.

(i) INCARCERATION FOR NONPAYMENT OF FINE OR RESTITUTION.

(1) Incarceration shall not automatically follow the nonpayment of a fine or restitution. Incarceration should be employed only after the court has examined the reasons for nonpayment. After consideration of the defendant's situation, means, and conduct with regard to the nonpayment of the fine and/or restitution,

the court shall determine the period of any incarceration in default of payment of the fine and/or restitution, subject to the following limitations:

(i) In no event shall such period of incarceration exceed one (1) day for each fifteen dollars (\$15.00) of the fine.

(ii) If the fine was imposed in connection with a felony, the period of incarceration may not exceed one (1) year.

(iii) If the fine was imposed in connection with a misdemeanor or municipal ordinance violation, the period of incarceration may not exceed one-third ($\frac{1}{3}$) of the maximum term of incarceration authorized for the offense.

(iv) If, at the time the fine was imposed or the restitution was ordered, a sentence of incarceration was also imposed, the aggregate of the period of incarceration imposed pursuant to this rule and the term of the sentence originally imposed may not exceed the maximum term of imprisonment authorized for the offense.

(2) In no case shall an indigent defendant be incarcerated for inability to pay a fine or court costs or restitution.

(3) If the court orders a defendant to pay a fine and/or restitution imposed as a result of a traffic infraction, the court may suspend the defendant's privilege to operate a motor vehicle in this state upon a failure of the defendant to comply with the order of the court. If the defendant's privilege to operate a motor vehicle has been suspended for failure to comply with such court order, the privilege may remain suspended until the total amount of the fine and/or restitution imposed is paid.

(j) COLLECTION OF COSTS. Court costs shall be deemed part of the penalty and the same procedures provided herein for nonpayment of fines shall apply for nonpayment of costs.

(k) EXECUTION FOR FINE AND COSTS. If the fine or court costs are not discharged by payment or by service of a period of incarceration in default of the fine or court costs and if restitution is not discharged, the clerk may issue execution for the fine, restitution, and costs adjudged, or any portion remaining unpaid. The district attorney, or the county or municipal attorney, as applicable, shall institute appropriate proceedings or take necessary action to collect unpaid fines, restitution, and costs.

Committee Comments

Rule 26.11 is taken from the ABA Standards for Criminal Justice, *Sentencing Alternatives and Procedures* 18-2.7 (2d ed. 1986). The provision sets out the factors the judge should consider when imposing a fine upon the defendant.

Ala.Code 1975, § 13A-5-11, provides schedules for permissible fines for felonies and also authorizes restitution as part of the penalty based on the amount of gain derived by the defendant or the amount of loss sustained by the victim. Ala.Code 1975, §§ 15-18-65 through 15-18-77, also provide for restitution payments.

After the court has made an inquiry pursuant to section (g) of this rule, it has the authority under section (h) to order an appropriate remedy for nonpayment. Ala.Code 1975, § 15-18-62, states that if a defendant defaults in payment of a fine, then the defendant is simply imprisoned. The United States Supreme Court has placed severe limitations on indigent persons' being forced to serve time for nonpayment of costs and fines. Section (h) provides more alternatives from which a judge may choose when deciding what action to take upon nonpayment of a fine.

An indigent, unable to pay fines or post bail, is entitled to credit against the maximum sentence for the time spent in presentence confinement. *Crowden v. Bowen*, 734 F.2d 641, 642 (11th Cir.1984); *Jackson v. Alabama*, 530 F.2d 1231, 1237 (5th Cir.1976); *Bearden v. Georgia*, 461 U.S. 660, 103 S.Ct. 2064, 76 L.Ed.2d 221 (1983). Once the state has determined that its penological interests do not require imprisonment, it cannot revoke probation and require imprisonment without first considering alternative measures of punishment when the probationer, through no fault of his own, cannot pay a fine.

The first sentence of section (i) is taken from ABA, Standards for Criminal Justice, *Sentencing Alternatives and Procedures* 18-7.4(b) (2d ed. 1986), and proposes that incarceration should not automatically follow failure to pay fines or restitution. One should not automatically be imprisoned when alternative methods are available.

Subsection (i)(1)(iv) is drafted to comply with the United States Supreme Court decision of *Williams v. Illinois*, 399 U.S. 235, 90 S.Ct. 2018, 26 L.Ed.2d 586 (1970). In *Williams*, the court held that if an indigent criminal is imprisoned in default of payment of a fine beyond the maximum sentence authorized by the statute regulating the substantive offense of which he was convicted, he has been denied equal protection of the law.

Subsection (i)(2) is consistent with the United States Supreme Court's holding in *Tate v. Short*, 401 U.S. 395, 91 S.Ct. 668, 28 L.Ed.2d 130 (1971), in which the court held there was a denial of equal protection to limit punishment to

payment of a fine for those who are able to pay, but to convert the fine to imprisonment for those who are unable to pay.

Subsection (i)(3) gives the court an alternative to imprisonment if defendant fails to comply with a court order.

Section (k) allows for execution for the fine and costs. This section provides the court with an alternative sanction in cases when incarceration for nonpayment of fines is not allowed or not chosen by the court.