

Alabama Rules of Criminal Procedure

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

Rule 26.4. Diagnostic evaluation and mental health examination.

At any time before sentence is pronounced, the court may order the defendant to undergo a physical or mental examination, including diagnostic evaluation. Reports under this rule shall be due at the same time as the presentence report, unless the court orders otherwise. The cost of such examination or evaluation shall be assessed as part of the court costs.

Committee Comments

Rule 26.4 provides the court with the power to order mental examinations after trial in appropriate cases. The purpose of the rule is to give the sentencing judge as much information as possible about the defendant's mental, emotional, and physical condition to aid the judge in determining sentence. The sentencing decision is complex and much is at stake, both to the defendant and to society.

When there are alternatives to incarceration, the court should know how best to prescribe a sentence that will not only punish but will also aid in rehabilitation of the defendant. When incarceration is the only alternative, the court should consider whether imprisonment will further reinforce the offender's antisocial tendencies or perhaps even present a danger to himself or others. See ABA, Standards for Criminal Justice, *Sentencing Alternatives and Procedures* 18-5.6 (2d ed. 1986), and comments thereto.

Rule 26.4 is purely discretionary with the court. Furthermore, the court is not required to use resources that are not reasonably available. The court may rely on a competent local physician, a local or regional mental health center, or whatever other source is available.

Alabama law deals specifically with the issue of a mental examination in Ala.Code 1975, § 15-22-51. That section provides for a presentence report to be made by a probation officer at the direction of the court. (See comments to Rule 26.3.) The statute further provides, "Whenever practicable, such investigation shall include physical and mental examinations of the defendant."

Further, an investigation may be made at any time that the defendant's sanity becomes an issue. See Rule 11 of these rules and the comments thereto. If the need for a mental health examination or evaluation is not revealed until after the presentence report is prepared, or if the need for additional testing or examination becomes apparent at the prehearing conference, the court may delay sentencing after the determination of guilt. Reports from examiners or

evaluators ordered prior to a prehearing conference, if any, are due (unless the court directs otherwise) at the same time as the presentence report.