

Rule 32. Sentencing and Judgment

(a) TIME OF SENTENCING.

(1) *In General.* Except as otherwise provided in this rule, upon a finding of guilty by plea or verdict, the court may sentence the defendant immediately or continue the sentencing to a further date.

(2) *In Cases Involving Certain Victims.* In any case in which a defendant has been found guilty of an offense involving a victim:

(A) The victim must be given a reasonable time prior to imposition of sentence to submit a victim impact statement as prescribed in D.C. Code § 23-1904 (2012 Repl.).

(B) The attorney for the government must make reasonable efforts to notify the victim of the right to submit a victim impact statement, and to be present and to make a statement at the defendant's sentencing. The notification may be made by first-class mail, postage prepaid, and must contain clear and concise instructions regarding the preparation of the impact statement, the name and address of a person in the office of the attorney for the government to whom it should be returned, and the time, date, and place where the sentencing will occur. The notification must allow the victim a reasonable time to respond prior to imposition of sentence.

(C) The attorney for the government must certify that the requirements of Rule 32(a)(2)(B) have been met. If such a certification has been made, or if the victim waives the right to submit a victim impact statement, the court may impose sentence without a victim impact statement. If for any reason the requirements of Rule 32(a)(2)(B) have not been met, the court must continue imposition of sentence for a time sufficient to permit compliance.

(D) The attorney for the government must promptly forward any victim impact statement either:

(i) to the Court Services and Offender Supervision Agency if it is preparing a presentence report; or

(ii) to the court, and must serve it on the defendant's attorney. The victim impact statement must be included in any presentence report and must be disclosed to the defendant's attorney at a reasonable time prior to sentencing. The court must consider any victim impact statement in determining the appropriate sentence.

(b) PRESENTENCE INVESTIGATION AND REPORT.

(1) *When Made.*

(A) *Required Investigation.*

(i) *In General.* In a case in which the defendant is to be sentenced for an offense punishable by imprisonment for more than one year, the Court Services and Offender Supervision Agency must make a presentence investigation and report to the court before the pronouncement of the sentence or the granting of probation unless, with the permission of the court, the defendant waives a presentence investigation and report, or the court finds that there is in the record information sufficient to enable the meaningful exercise of sentencing discretion, and the court explains this finding on the record.

(ii) *Restitution.* If the law permits restitution, the Court Services and Offender Supervision Agency must conduct an investigation and submit a report that contains sufficient information for the court to order restitution.

(B) *Request by the Court.* In any other case, the Court Services and Offender Supervision Agency must make a presentence investigation and report upon request by the court.

(C) *Criminal Record.* If an investigation and report are not requested or made, and the defendant is not sentenced at the time of a guilty plea or guilty verdict, the court may order the Court Services and Offender Supervision Agency to provide the court with the defendant's prior criminal record.

(2) *Report.* The report of the presentence investigation must contain:

(A) any prior criminal record of the defendant;

(B) such information about the defendant's characteristics, financial condition and the circumstances affecting the defendant's behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant;

(C) information that assesses any financial impact on any victim;

(D) any victim impact statement as prescribed in D.C. Code § 23-1904 (2012 Repl.); and

(E) such other information as may be required by the court.

(3) *Disclosure.*

(A) *In General.* The court must make available to the defendant through the defendant's attorney and to the attorney for the government a copy of the report of the presentence investigation a reasonable time before imposing sentence. To the extent that the report contains diagnostic opinion which might seriously disrupt a program of rehabilitation, sources of information obtained upon a promise of confidentiality, or any other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other persons, the court may withhold any such portions of the presentence investigation report.

(B) *Oral or Written Summary.* If the court is of the view that there is information in the presentence report which should not be disclosed under Rule 32(b)(3)(A), the court in lieu of making the report or part thereof available must state orally or in writing a summary of the factual information contained therein to be relied on in determining sentence, and must give the defendant or the defendant's attorney an opportunity to comment thereon. The statement may be made to the parties in camera.

(C) *Disclosure to Adverse Party.* Any material disclosed to the one party must also be disclosed to the adverse party.

(D) *Time to Disclose.* The report must not be submitted to the court or its contents disclosed to anyone unless the defendant has pleaded guilty or nolo contendere, or has been found guilty, except that a judicial officer may, with the consent of the defendant given on the record or in writing, inspect a presentence report at any time.

(E) *Report Under D.C. Code § 24-903(e).* The reports of studies and recommendations contained therein made pursuant to D.C. Code § 24-903 (e) (2017 Supp.) shall be considered a presentence investigation within the meaning of Rule 32(b)(3).

(c) SENTENCING.

(1) *In General.* At sentencing, the court:

(A) must verify that the defendant and the defendant's attorney have read and discussed the presentence report and any addendum to the report; and

(B) must allow the parties' attorneys to comment on the probation officer's determinations and other matters relating to an appropriate sentence.

(2) *Introducing Evidence; Producing a Statement.* The court may permit the parties to introduce evidence. If a witness testifies at sentencing, Rule 26.2(a)-(d) and (f) applies. If a party fails to comply with a Rule 26.2 order to produce a witness's statement, the court must not consider that witness's testimony.

(3) *Court Determinations.* At sentencing, the court:

(A) may accept any undisputed portion of the presentence report as a finding of fact;

(B) must—for any disputed portion of the presentence report or other controverted matter—rule on the dispute or determine that a ruling is unnecessary either because the matter will not affect sentencing, or because the court will not consider the matter in sentencing; and

(C) must append a copy of the court's determinations under this rule to any copy of the presentence report made available to the Bureau of Prisons.

(4) *Opportunity to Speak.*

(A) *By a Party.* Before imposing sentence, the court must:

(i) provide the defendant's attorney an opportunity to speak on the defendant's behalf;

(ii) address the defendant personally in order to permit the defendant to speak or present any information to mitigate the sentence; and

(iii) provide an attorney for the government an opportunity to speak equivalent to that of the defendant's attorney.

(B) *By a Victim.* Before imposing sentence in a case in which a defendant has been found guilty of an offense involving a victim, the court must address any such victim who is present at sentencing and must permit the victim to speak or submit any information about the sentence.

(C) *In Camera Proceedings.* Upon a party's motion and for good cause, the court may hear in camera any statement made under Rule 32(c)(4).

(5) *Pronouncement.* Sentence must thereafter be pronounced. Unless the court pronouncing a sentence otherwise provides, a sentence imposed on a defendant for conviction of an offense must run consecutively to any other sentence imposed on such defendant for conviction of an offense. The defendant may be placed on probation unless otherwise provided by law. The court must precisely define any conditions of probation to the defendant.

(d) DEFENDANT'S RIGHT TO APPEAL.

(1) *Advice of a Right to Appeal.*

(A) *Appealing a Conviction.* If the defendant pleaded not guilty and was convicted, after sentencing the court must advise the defendant of the right to appeal the conviction.

(B) *No Duty to Advise.* There shall be no duty on the court to advise the defendant of any right to appeal after sentence is imposed following a plea of guilty or nolo contendere.

(C) *Appeal Costs.* The court must advise a defendant who is unable to pay appeal costs of the right to ask for permission to appeal in forma pauperis.

(2) *Clerk's Filing of Notice.* If the defendant so requests, the clerk must immediately prepare and file a notice of appeal on the defendant's behalf.

(e) **DEFENDANT'S RIGHT TO SEEK MODIFICATION OR SUSPENSION OF CHILD SUPPORT PAYMENTS.** If the defendant is sentenced to a period of imprisonment of more than 30 days, the court must inquire whether the defendant is subject to a child support order. If so, the court must comply with D.C. Code § 23-112a (2012 Repl.). If the defendant elects to file a pro se petition to modify or suspend the support order, the clerk must serve it as provided in D.C. Code § 23-112a (c) (2012 Repl.).

(f) **JUDGMENT.** In the judgment of conviction, the court must set forth the plea, the jury verdict or the court's findings, the adjudication, and the sentence. If the defendant is found not guilty or is otherwise entitled to be discharged, the court must so order. The court must sign the judgment, the clerk must enter it, and it must be transmitted to the authority taking custody of or having supervision over the defendant.

(g) **DISCHARGE FROM PROBATION, DISMISSAL OF PROCEEDINGS, AND EXPUNGEMENT OF OFFICIAL RECORDS UNDER D.C. CODE § 48-904.01.**

(1) *Discharge From Probation and Dismissal of Proceedings.*

(A) *Notice.* If a person has been placed on probation under D.C. Code § 48-904.01 (e)(1) (2017 Supp.), the Court Services and Offender Supervision Agency must, 30 days before the expiration of probation, notify the court in writing if the person is not successfully completing probation. The Agency must mail a copy of the notice to the person, the person's attorney, the attorney for the government, the Metropolitan Police Department, and the clerk of the Criminal Division. The attorney for the government may file and serve a response in opposition within 14 days.

(B) *Hearing and Discharge.* The court may hold a hearing to determine whether the person has successfully completed probation. If the court so determines, it must enter an order discharging the person from probation and dismissing the proceedings against the person. The court may, with notice as provided above, take such action prior to the expiration of the maximum period of probation imposed.

(C) *Nonpublic Record.* If an order of discharge and dismissal is entered, the clerk must thereafter retain a nonpublic record of the case solely for use by the courts in determining whether, in subsequent proceedings, such person qualifies for treatment under D.C. Code § 48-904.01 (e)(1) (2017 Supp.).

(2) *Expungement of Official Records.*

(A) *Motion to Expunge.* A person who has been discharged from probation and whose charges have been dismissed pursuant to D.C. Code § 48-904.01 (e)(1) (2017 Supp.) and Rule 32(g)(1) may file with the court and serve upon the attorney for the government a motion for expungement of all official records relating to the offense. The attorney for the government may file and serve an opposition within 14 days.

(B) *Expungement.* If the court, after hearing, determines that the person was discharged from probation and that the proceedings against the person were dismissed under D.C. Code § 48-904.01 (e)(1) (2017 Supp.), the court must enter an order expunging all official records of the offense to the extent required by D.C. Code § 48-904.01 (e)(2) (2017 Supp.).

(C) *Exceptions.* In a case involving codefendants, the court must first sanitize the records to be expunged. The order of expungement shall not affect the nonpublic record maintained under D.C. Code § 48-904.01 (e)(1) (2017 Supp.) and Rule 32(g)(1)(C).

COMMENT TO 2017 AMENDMENTS

This rule has been amended consistent with the 2008 amendments to the federal rule. Specifically, subsection (b)(1)(A) has been amended to add a requirement that the presentence investigation include information concerning restitution in cases in which the law permits restitution. Subsection (b)(2) has been amended to include a requirement that the report contain information about the financial impact of the crime on any victim.

References to “victim as defined in D.C. Code § 23-1905(2)” were shortened to “victim” in light of the new definition in Rule 1(d)(12).

The 10-day deadlines in this rule have been changed to 14 days in light of the time-calculation changes made to Rule 45.

Certain 2011 amendments to *Federal Rule of Criminal Procedure 32(d)(2)* (which corresponds to subsection (b)(2) of this rule) have been rejected as locally inapplicable.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It differs from the federal rule in several respects.

This rule omits all references to the Federal Sentencing Guidelines. It also omits paragraph (a) of the federal rule (Definitions), because its definitions are locally inapplicable.

Paragraph (a) of this rule, regarding the time of sentencing, corresponds to paragraph (b) of the federal rule. It contains provisions implementing The Crime Victims’ Rights Act of 2000 (D.C. Code § 23-1901 et seq. (2012 Repl.)).

Paragraph (b) of this rule, regarding presentence investigations, corresponds to paragraphs (c)-(g) of the federal rule. It differs from the federal rule to reflect local practice. It requires a presentence report in felony cases, unless the defendant waives it or the court makes certain findings. A report is required in misdemeanor cases only if the court requests one.

Paragraph (c) of this rule, regarding sentencing, corresponds to paragraph (i) of the federal rule. Subparagraph (c)(3), “Court Determinations,” is identical to its federal counterpart, but is new to this rule. It requires the court to make findings with respect to any disputed portion of the presentence report or other sentencing matter, unless that portion will not affect the sentence or the court will not consider it. Any such finding must be reduced to writing and appended to the presentence report.

Subparagraph (c)(4)(B) contains provisions implementing The Crime Victims’ Rights Act of 2000 (D.C. Code § 23-1901 et seq. (2012 Repl.))

Paragraph (d), concerning advice of appellate rights, corresponds to paragraph (j) of the federal rule. Consistent with the former Superior Court rule, it provides that the court has no duty to advise the defendant of any right to appeal after a guilty or nolo contendere plea.

Material formerly in paragraph (e), concerning plea withdrawal, has been moved to Rule 11.

Paragraph (e), regarding motions to suspend or modify child support payments, was added to reflect the requirements of D.C. Code § 23-112a (2012 Repl.). That section,

and hence paragraph (e) of this rule, apply whether the proceeding is the initial sentencing or a probation revocation resulting in imprisonment for more than 30 days.

Paragraph (f), regarding judgment, corresponds to paragraph (k) of the federal rule. It omits provisions dealing with property subject to forfeiture. Proceedings for the forfeiture of property in the Superior Court are brought pursuant to Superior Court Civil Rule 71A-1.

Material formerly in paragraph (g), concerning production of witness statements, has been moved to subparagraph (c)(2) of this rule.

Paragraph (g), concerning "probation before judgment" under D.C. Code § 48-904.01 (e)(1) (2014 Repl.), has no federal counterpart. It has been revised to make it easier to read. No change in substance is intended.

References in the former rule to the "Social Services Division" have been replaced with the "Court Services and Offender Supervision Agency," as the latter agency is now responsible for preparation of presentence reports and supervision of probationers.