

#### Rule 26.4. Pre-sentence report

**a. When Prepared.** The court shall require a pre-sentence report in all cases in which it has discretion over the penalty to be imposed, except that requiring such a report is discretionary in those cases in which the defendant can only be sentenced to imprisonment for less than one year, in which a request under Rule 26.3(a) is granted, or in which a pre-sentence report concerning the defendant is already available. A pre-sentence report shall not be prepared until after the determination of guilt has been made or the defendant has entered a plea of guilty or no contest.

**b. When Due.** Except when a request under Rule 26.3(a) has been granted, the pre-sentence report shall be delivered to the sentencing judge at least 2 days before the date set for sentencing.

CREDIT(S)

Amended May 7, 1975, effective Aug. 1, 1975; amended and effective May 9, 1980.

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## Rule 26.6. Disclosure of the pre-sentence, diagnostic, and mental health reports

**a. Disclosure to the Parties.** The court shall permit the prosecutor and defense counsel, or if without counsel, the defendant, to inspect all presentence, diagnostic and mental health reports. A portion of any report not made available to one party shall not be made available to any other. Once the pre-sentence report is made available to the defendant, the court shall permit the victim to inspect it except those parts excised by the court or made confidential by law.

**b. Date of Disclosure.** Reports ordered under Rules 26.4 and 26.5 shall be made available to the parties at least 2 days prior to the date set for sentencing. Reports ordered under Rule 26.7(c) shall be made available no more than 2 days after delivery to the court and no less than 2 days prior to the pre-sentencing hearing unless agreed otherwise by the parties.

**c. Excision.** The court may excise from the copy of the pre-sentence, diagnostic and mental health reports disclosed to the parties:

- (1) Diagnostic opinions which may seriously disrupt a program of rehabilitation,
- (2) Sources of information obtained on a promise of confidentiality and,
- (3) Information which would disrupt an existing police investigation.

When a portion of the pre-sentence report is not disclosed, the court shall inform the parties and shall state on the record its reasons for making the excision.

**d. Disclosure After Sentencing.**

- (1) After sentencing, all diagnostic, mental health and pre-sentence reports, other than those portions excised under (c)(2) and (c)(3), shall be furnished to persons having direct responsibility for the custody, rehabilitation, treatment and release of the defendant. The

unexcised reports shall be made available to a reviewing court when a relevant issue has been raised and to a court sentencing the defendant after a subsequent conviction.

(2) Neither a pre-sentence report nor any statement made in connection with its preparation shall be admissible as evidence in any proceeding bearing on the issue of guilt.

**e. Public Disclosure of Pre-Sentence Diagnostic and Mental Health Reports.** Reports prepared under Rules 26.4, 26.5 and 26.7(c) are matters of public record unless otherwise provided by the court or made confidential by law.

CREDIT(S)

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