

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1753

Amending Criminal Rule 32.1
concerning presentence reports

IT IS ORDERED:

Criminal Rule 32.1 is amended to read as follows:

Rule 32.1. Presentence Procedure for Felony Sentencings.

(a) **Scheduling & Preliminary Filings.** At the time a defendant's guilt in a felony case is established by verdict or plea,

(1) the judge shall establish the date for a sentencing hearing and the date for a separate presentencing hearing, if appropriate. If the judge elects to conduct all of the proceedings at a single hearing, all the procedures that govern presentencing and sentencing hearings shall apply at the single hearing;

(2) unless the court has accepted the parties' negotiated sentencing agreement and has decided to proceed without a presentence report pursuant to Criminal Rule 11(e)(1), the judge shall direct the Department of Corrections to conduct a presentence investigation and prepare a report in all cases where the defendant has been convicted of an unclassified felony or a class A felony, or in any other case if either party requests a presentence report or the judge concludes that there is good cause to have one;

(3) the judge shall direct the parties to file the following preliminary pleadings within ten days, unless a different schedule is ordered by the court:

(A) *Defendant's Sentencing Status.* If the defendant's sentencing is governed in whole or part by presumptive sentencing, the state shall file a notice explaining the defendant's status as a first, second, or third felony offender for purposes of presumptive sentencing, as well as any other factor that triggers a specific presumptive range. If the defendant is to be sentenced for an unclassified felony under AS 12.55.125(a) or (b), or if the defendant is subject to the mandatory sentencing provisions of AS 12.55.125(l), the state shall specify the applicable mandatory minimum term of imprisonment. If the defendant is to be sentenced for two or more offenses, the state shall specify the amount of consecutive imprisonment, if any, required by AS 12.55.127; and

(B) *Defendant's Financial Statement.* In cases where restitution may be ordered, the defendant shall submit a financial statement to the probation office on a form designated by the Administrative Director.

(b) **Presentence Investigation and Report.**

(1) *Contents and Filing.* If the court directs the Department of Corrections to prepare a presentence report, the report shall be filed with the court and served on counsel at least 30 days before the sentencing hearing, or 30 days before the presentencing hearing, if one is scheduled. The report shall contain all of the defendant's prior criminal convictions and findings of delinquency

and any other information about the defendant's characteristics, financial condition, and the circumstances affecting the defendant's behavior that may be helpful in fashioning the defendant's sentence, a victim impact statement, and any other information required by the judge. The presentence report shall comply with the Victims' Rights Act, AS 12.61.100 - 12.61.150 and AS 12.55.022.

(2) *Restitution Information.* In cases where the court may order the defendant to pay restitution, the presentence report must include:

(A) defendant's financial statement completed under subparagraph (a)(2)(B) of this rule; and

(B) information concerning the identity of any victims or other persons seeking restitution and, if known, whether any victim or other person expressly declines restitution, the nature and amount of any damages together with any supporting documentation, a restitution amount recommendation, and the names of any co-defendants and their case numbers.

(3) *Disclosure.* Unless the judge finds that providing specific portions of the report to the defendant would prove detrimental to the rehabilitation of the defendant or the safety of the public, the defense attorney may give a full copy of the report to the defendant. Unless otherwise ordered, or except as specifically allowed by other provisions of law, further disclosure of the report shall be limited to agents of the state's attorney or the defendant's attorney, any reviewing courts, and the agencies having charge of the defendant's rehabilitation.

(4) *Plea Agreements.*

(A) If the parties request preparation of a presentence report to aid them in reaching a plea agreement, the judge may order the department to prepare such a report prior to the time stated in this rule. If a report is prepared prior to entry of a verdict or plea of guilty or no contest, the report shall be submitted only to the parties and not to the judge.

(B) Notwithstanding subparagraph (b)(4)(A), the judge may use the presentence report to determine whether to accept a plea agreement under Criminal Rule 11.

(5) *Service.* The parties must serve the Department of Corrections with all filings relating to sentencing, and the court must distribute all orders related to sentencing to the department.

(c) **Notice of Aggravating Factors, Extraordinary Circumstances, and Restitution.** Within seven days after service of the presentence report on the parties, or, if no presentence report is ordered, at least 30 days before the sentencing hearing:

(1) The state shall list the aggravating factors and describe the nature of any extraordinary circumstances on which the state intends to rely at sentencing. This notice shall include a written summary of the evidence that the state will rely on to establish each aggravating factor or extraordinary circumstance.

(2) The state shall give notice if it will seek restitution from the defendant in an amount different from the recommendation in the presentence report. The notice shall specify the amount of

restitution sought and shall set forth the facts establishing the basis for this amount, and shall include information concerning the identity of any victims or other persons seeking restitution and, if known, whether any victim or other person expressly declines restitution, the nature and amount of any damages together with any supporting documentation, and the names of any co-defendants and their case numbers.

(3) The state shall give notice of any evidence on which it intends to rely at sentencing that is not contained in the presentence report. If the state intends to present any witness, the notice shall contain a brief summary of the witness's anticipated testimony. The notice need not include any information to be presented by a victim's oral or written statement.

(4) Notices under this rule shall be served by delivery to parties in the same community as the party making service, and by facsimile transmission ("fax") to parties in outlying communities. When service is made by fax, a paper copy of the notices shall also be mailed to the intended recipient.

(d) Notice of Mitigating Factors, Extraordinary Circumstances, and Responses to State's Notices.

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(e) Disputing Mitigating Factors, Extraordinary Circumstances, and Objections to Restitution.

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(f) Adjudicating Disputed Factual and Legal Issues.

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(g) Restitution Procedures When There Is No Presentence Investigation.

(1) In cases where the court may order the defendant to pay restitution but no presentence investigation report is prepared, the prosecuting authority must file a notice concerning restitution at least ten days before the sentencing hearing, unless otherwise ordered by the court. The notice shall include information concerning the identity of any victims or other persons seeking restitution and, if known, whether any victim or other person expressly declines restitution, the nature and amount of any damages together with any supporting documentation, a restitution amount recommendation, and the names of any co-defendants and their case numbers.

(2) Unless otherwise ordered by the court, the defendant shall file any objections to the information submitted under paragraph (h)(1), or provide information that the victim or other person expressly declines restitution, at least five days before the sentencing hearing, together with defendant's financial statement on a form designated by the Administrative Director.

DATED: February 25, 2011

EFFECTIVE DATE: October 14, 2011

/s/
Chief Justice Carpeneti

/s/
Justice Fabe

/s/
Justice Winfree

/s/
Justice Christen

/s/
Justice Stowers