

AMENDMENTS TO THE FEDERAL RULES
OF CRIMINAL PROCEDURE

Rule 11. Pleas.

(c) *Advice to defendant.*—Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and inform the defendant of, and determine that the defendant understands, the following:

(1) the nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law, including the effect of any special parole or supervised release term, the fact that the court is required to consider any applicable sentencing guidelines but may depart from those guidelines under some circumstances, and, when applicable, that the court may also order the defendant to make restitution to any victim of the offense; and

Rule 32. Sentence and judgment.

(a) *Sentence.*

(1) *Imposition of sentence.*—Sentence shall be imposed without unnecessary delay, but the court may, when there is a factor important to the sentencing determination that is not then capable of being resolved, postpone the imposition of sentence for a reasonable time until the factor is capable of being resolved. Prior to the sentencing hearing, the court shall provide the counsel for the defendant and the attorney for the Government with notice of the probation officer's determination, pursuant to the provisions of subdivision

(c)(2)(B), of the sentencing classifications and sentencing guideline range believed to be applicable to the case. At the sentencing hearing, the court shall afford the counsel for the defendant and the attorney for the Government and opportunity to comment upon the probation officer's determination and on other matters relating to the appropriate sentence. Before imposing sentence, the court shall also—

(A) determine that the defendant and defendant's counsel have had the opportunity to read and discuss the presentence investigation report made available pursuant to subdivision (c)(3)(A) or summary thereof made available pursuant to subdivision (c)(3)(B);

(B) afford counsel for the defendant an opportunity to speak on behalf of the defendant; and

(C) address the defendant personally and determine if the defendant wishes to make a statement and to present any information in mitigation of the sentence.

The attorney for the Government shall have an equivalent opportunity to speak to the court. Upon a motion that is jointly filed by the defendant and by the attorney for the Government, the court may hear in camera such a statement by the defendant, counsel for the defendant, or the attorney for the Government.

(2) *Notification of right to appeal.*—After imposing sentence in a case which has gone to trial on a plea of not guilty, the court shall advise the defendant of the defendant's right to appeal, including any right to appeal the sentence, and of the right of a person who is unable to pay the cost of an appeal to apply for leave to appeal in forma pauperis. There shall be no duty on the court to advise the defendant of any right of appeal after sentence is imposed following a plea of guilty or nolo contendere, except that the court shall advise the defendant of any right to appeal the sentence. If the defendant so requests, the clerk of the court shall prepare and file forthwith a notice of appeal on behalf of the defendant.

(c) *Presentence investigation.*

(1) *When made.*—A probation officer shall make a presentence investigation and report to the court before the imposition of sentence unless the court finds that there is in the record information sufficient to enable the meaningful exercise of sentencing authority pursuant to 18 U. S. C. § 3553, and the court explains this finding on the record.

Except with the written consent of the defendant, the report shall 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.

(2) *Report.*—The report of the presentence investigation shall contain—

(A) information about the history and characteristics of the defendant, including prior criminal record, if any, financial condition, and any circumstances affecting the defendant's behavior that may be helpful in imposing sentence or in the correctional treatment of the defendant.

(3) *Disclosure.*

(A) At least 10 days before imposing sentence, unless this minimum period is waived by the defendant, the court shall provide the defendant and the defendant's counsel with a copy of the report of the presentence investigation, including the information required by subdivision (c)(2) but not including any final recommendation as to sentence, and not to the extent that in the opinion of the court the report contains diagnostic opinions, which if disclosed, might seriously disrupt a program of rehabilitation; or 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 shall afford the defendant and the defendant's counsel an opportunity to comment on the report and, in the discre-

tion of the court, to introduce testimony or other information relating to any alleged factual inaccuracy contained in it.

(E) The reports of studies and recommendations contained therein made by the Director of the Bureau of Prisons pursuant to 18 U. S. C. § 3552(b) shall be considered a presentence investigation within the meaning of subdivision (c)(3) of this rule.

Rule 32.1. Revocation or modification of probation or supervised release.

(a) Revocation of probation or supervised release.

(1) *Preliminary hearing.*—Whenever a person is held in custody on the grounds that the person has violated a condition of probation or supervised release, the person shall be afforded a prompt hearing before any judge, or a United States magistrate who has been given authority pursuant to 28 U. S. C. § 636 to conduct such hearings, in order to determine whether there is probable cause to hold the person for a revocation hearing. The person shall be given

(A) notice of the preliminary hearing and its purpose and of the alleged violation;

(B) an opportunity to appear at the hearing and present evidence in the person's own behalf;

(C) upon request, the opportunity to question witnesses against the person unless, for good cause, the federal magistrate decides that justice does not require the appearance of the witness; and

(D) notice of the person's right to be represented by counsel.

The proceedings shall be recorded stenographically or by an electronic recording device. If probable cause is found to exist, the person shall be held for a revocation hearing. The person may be released pursuant to Rule 46(c) pending the

revocation hearing. If probable cause is not found to exist, the proceeding shall be dismissed.

(2) *Revocation hearing.*—The revocation hearing, unless waived by the person, shall be held within a reasonable time in the district of jurisdiction. The person shall be given

- (A) written notice of the alleged violation;
 - (B) disclosure of the evidence against the person;
 - (C) an opportunity to appear and present evidence in the person's own behalf;
 - (D) the opportunity to question adverse witnesses;
- and
- (E) notice of the person's right to be represented by counsel.

(b) *Modification of probation or supervised release.*—A hearing and assistance of counsel are required before the terms or conditions of probation or supervised release can be modified, unless the relief to be granted to the person on probation or supervised release upon the person's request or the court's own motion is favorable to the person, and the attorney for the government, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation or supervised release is not favorable to the person for the purposes of this rule.

Rule 40. Commitment to another district.

(d) *Arrest of probationer or supervised releasee.*—If a person is arrested for a violation of probation or supervised release in a district other than the district having jurisdiction, such person shall be taken without unnecessary delay before the nearest available federal magistrate. The federal magistrate shall:

- (1) Proceed under Rule 32.1 if jurisdiction over the person is transferred to that district;
- (2) Hold a prompt preliminary hearing if the alleged violation occurred in that district, and either (i) hold

the person to answer in the district court of the district having jurisdiction or (ii) dismiss the proceedings and so notify that court; or

(3) otherwise order the person held to answer in the district court of the district having jurisdiction upon production of certified copies of the judgment, and warrant, and the application for the warrant, and upon a finding that the person before the magistrate is the person named in the warrant.

Rule 41. Search and seizure.

(e) *Motion for return of property.* — A person aggrieved by an unlawful search and seizure or by the deprivation of property may move the district court for the district in which the property was seized for the return of the property on the ground that such person is entitled to lawful possession of the property. The court shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted, the property shall be returned to the movant, although reasonable conditions may be imposed to protect access and use of the property in subsequent proceedings. If a motion for return of property is made or comes on for hearing in the district of trial after an indictment or information is filed, it shall be treated also as a motion to suppress under Rule 12.