

STATE OF MINNESOTA

IN SUPREME COURT

C1-84-2137

CX-01-926

**ORDER ESTABLISHING DEADLINE FOR SUBMITTING
COMMENTS ON PROPOSED AMENDMENTS
TO THE RULES OF CRIMINAL PROCEDURE
AND JUVENILE DELINQUENCY PROCEDURE**

WHEREAS, on October 31, 2003, the Court ordered that Supreme Court Technology Planning Committee (TPC) develop, through the MNCIS project and in consultation with appropriate criminal justice partners, a standardized, uniform state-wide sentencing form or order that captures for immediate transmission essential sentencing information; and

WHEREAS, the TPC established the Sentencing Form Subcommittee for that purpose; and

WHEREAS, on February 16, 2005, the Subcommittee filed a report with the Court, a copy of which is attached here, setting forth its recommendations for the required elements of the sentencing order, and requesting amendments to the Rules of Criminal Procedure and Juvenile Delinquency in conformance with those recommendations,

IT IS HEREBY ORDERED that any individual wishing to provide a written statement in support or opposition to the proposed amendments, which have been repeated on the following pages, shall submit fourteen copies of such statement addressed to Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, Minnesota 55155, on or before Friday, April 22, 2005.

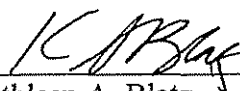
Dated: March 15, 2005

OFFICE OF
APPELLATE COURTS

MAR 15 2005

FILED

BY THE COURT:



Kathleen A. Blatz
Chief Justice

Amend Minn. R. Crim. P. 27.03, subd. 6 as follows:

Subd. 6. Record. (A) A verbatim record of the sentencing proceedings shall be made. The defendant, prosecution, or any person may, at their expense, order a transcript of the verbatim record made in accordance with this rule.

(B) Information from the sentencing proceeding for counts for which the offense level prior to sentencing was a felony or gross misdemeanor shall also be recorded in a sentencing ~~form or~~ order that, at a minimum, contains:

(1) the defendant's name;

(2) case number;

(3) for each count:

a. if the defendant pled guilty to or was found guilty of the offense:

i. the offense date;

ii. a citation to the offense statute ~~and level of offense~~;

iii. the information specified in subdivision 4 (precise terms of sentence including the amount of any fine, time spent in custody, whether the sentence is a departure and if so, the reasons therefor, and terms and conditions of probation);

iv. the level of sentence; and

v. restitution, if appropriate, and whether it shall be joint and several with other persons; or

b. if the defendant did not plead guilty to or was not found guilty of the offense, that the defendant was acquitted or the count was dismissed;

(4) other financial obligations such as surcharges, law library fees, court costs, and treatment evaluation costs; and

(5) the signatures of the sentencing judge ~~and defendant~~.

The sentencing ~~form or~~ order shall be provided in place of the transcript required in Minnesota Statutes sections 243.49 and 631.41.

Amend Minn. R. Juv. Del. P. 19.10, subd. 5 as follows:

Subd. 5. Record of Proceedings.

(A) Upon a plea of guilty after a child has been determined to be an Extended Jurisdiction Juvenile, a verbatim record shall be made of the plea and sentencing proceedings.

(B) A record of the adult stayed sentence shall also be recorded in a sentencing ~~form or~~ order that, at a minimum, contains:

(1) the child's name;

(2) case number;

(3) for each count:

(a) if the child plead guilty to or was found guilty of the offense:

(i) the offense date;

(ii) a citation to the offense statute ~~and level of offense~~;

(iii) the precise terms of the adult criminal sentence, and that execution has been stayed;

(iv) the level of sentence; and

(v) the amount of time spent in custody, if any; or

(b) if the child did not plead guilty to or was not found guilty of the offense, that the child was acquitted or the count was dismissed; and

(4) the signatures of the sentencing judge ~~and child~~.

Where venue is transferred as provided in subdivision 4, a copy of the sentencing ~~form or~~ order shall be filed with the transferring court.

Statewide Sentencing Order Project: Final Report

(With Explanation and Examples)

Developed by:

Sentencing Forms Subcommittee
of the Supreme Court Technology Planning Committee

November 2004

TPC Sentencing Forms Subcommittee Members

Chair: *Hon. Tom McCarthy*, First Judicial District Court Judge

Hon. Hunter Anderson, Tenth Judicial District Court Judge

Jim Attwood, Fillmore County Court Administrator

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CONTENTS

Background	1
Purpose.....	2
Scope of Use	2
Process Issues	3
Elements of Sentencing Order	4
Explanation of Elements.....	8
Proposed Amendments.....	15
MNCIS Demo Orders.....	17
Non-MNCIS Sample Order	21

Background

On October 31, 2003, the Supreme Court issued an order eliminating the mandatory production of plea and sentencing transcripts in criminal cases. As part of that order, the Court ordered:

The Supreme Court Technology Planning Committee is directed to develop, through the MNCIS project and in consultation with appropriate criminal justice partners, a standardized, uniform state-wide sentencing form or order that captures for immediate transmission essential sentencing information consistent with Minn. R. Crim. P. 27.03, subd. 6 as amended herein. The form shall be completed and implemented in conjunction with the MNCIS rollout.¹

To fulfill the Court's directive, the TPC established the Sentencing Forms Subcommittee, which is a statewide group consisting, not only of TPC members, but of members of all stakeholders that would use or be affected by the sentencing order, including judges, court administrators, county and city attorneys, public defenders, probation officers, and the Department of Corrections. See the cover page for a complete list of members.

The Sentencing Forms Subcommittee held four half-day meetings in the spring of 2004. The first two meetings were devoted to discussing the purpose of the order and identifying the informational elements that should be on it. The third and fourth meetings were devoted to refining the identified elements and designing an order based on them. However, it was recognized that the ultimate appearance of any order produced by MNCIS will be largely dictated by the technological capabilities of the system and testing experience.

During the summer and early fall of 2004, the subcommittee actively sought feedback from the above-named stakeholders by making numerous in-person presentations at different forums within the state. The subcommittee received extensive commentary, which it reviewed in detail when it met again in October 2004. This packet represents the final decisions and recommendations of the Sentencing Forms Subcommittee, and contains:

- 1) A chart identifying the elements that should be included in the sentencing order as developed in MNCIS;
- 2) Proposed amendments to Minn. R. Crim. P. 27.03 and Minn. R. Juv. Del. P. 19.10, subd. 5 to accord with the sentencing elements identified by the subcommittee;
- 3) Demos indicating what a sentencing order that is produced by MNCIS *could* look like, working on the principle that only those elements ordered should be included in the sentencing order printout; and
- 4) A sample of what the sentencing order *could* look like in a paper format if non-MNCIS counties choose to utilize the work product of this subcommittee prior to the MNCIS rollout.

¹ See Order Promulgating Amendments to the Rules of Criminal Procedure, No. C1-84-2137 at pg. 6, ¶ 3 (Oct. 31, 2003).

Purpose

The subcommittee recognized that the sentencing order could serve several different purposes, and that the information represented on the order would vary in accordance with each. The subcommittee did not attempt to rank the importance of each purpose, nor did they choose to limit the communicative value of the order. Therefore, the elements identified in this document could serve all of the following purposes:

- 1) To provide the defendant with a copy of the sentence immediately following (or soon thereafter) the sentencing hearing.
- 2) To communicate the sentence to our criminal justice partners (i.e., probation, jails, etc.) immediately following (or soon thereafter) the sentencing hearing.
- 3) To serve as a warrant of commitment for local confinement and prison commitment.
Note: This purpose is dictated by Minn. R. Crim. P. 27.03, subd. 6, which provides that “the sentencing form or order shall be provided in place of the transcript required in Minnesota Statutes, sections 243.49 and 631.41.”
- 4) To ensure that all of the required elements of sentence are collected (e.g., to aid in the collection of new legislative requirements such as conditional release terms).
- 5) To facilitate the communication of sentencing departures to the Sentencing Guidelines Commission.

Though the subcommittee has attempted to meet all of these purposes in identifying the essential elements of the order, it took special note of feedback emphasizing that the order must be simple, and easy for the defendant to understand. Therefore, MNCIS should consider this goal paramount in designing the order.

Scope of Use

The subcommittee received feedback expressing concern about the feasibility of producing a sentencing order for misdemeanor-level offenses, especially in high-volume courtrooms. However, as currently written, Minn. R. Crim. P. 27.03, subd. 6 requires an order for *all* offense levels. Prior to amendment in 2003, the rule did not require the production of plea and sentencing transcripts for misdemeanor cases, so the subcommittee felt it should similarly not be necessary to produce an order for misdemeanor cases. As such, the subcommittee recommends: 1) that MNCIS develop the capability to produce an order for misdemeanor offenses, but that use of the capability be optional at the local level; and 2) that Minn. R. Crim. P. 27.03, subd. 6 be amended to state that the order is only required for counts for which the offense level prior sentencing was a felony or gross misdemeanor. The proposed amendments key the requirement for the order off of the offense level rather than the sentence level to capture those instances in which the court imposes a sentence that reduces the conviction to a misdemeanor pursuant to Minn. Stat. § 609.13. It is not intended that the order be required for counts that were originally charged as felonies or gross misdemeanors, but for which the charge was reduced (by amending the charge) at the prosecutor’s discretion or as part of a plea agreement prior to sentencing. See the section entitled Proposed Amendments.

Process Issues

The main goal of this subcommittee was to create a template from which MNCIS could develop a sentencing order that will contain only the information that is ordered during sentencing. The vision is that the court administrator will be able to electronically record the elements of the sentence in real time as they are pronounced in the courtroom. However, it is recognized that the feasibility of this vision is largely dependent on the capabilities of the technology. Further development and testing will be required by MNCIS to reach this goal, and it is fully anticipated that such development and testing will occur. The work product of this subcommittee is intended to provide MNCIS with the sentencing order requirements necessary to begin that development and testing process.

Additionally, it is recognized that use of the sentencing order raises numerous issues with regard to training, courtroom staffing, and procedure (i.e., the physical process of getting signatures, providing copies, etc.). It is anticipated that these business issues will be addressed as the order is made available to MNCIS counties.

Elements of Sentencing Order

This table sets forth the agreed-upon elements of the sentencing order, broken down according to the sections they would be expected to occupy on the printout. Though this document includes all possible elements of a sentencing order, the subcommittee will request that the MNCIS sentencing order be designed so that only those elements that are ordered are included in the sentencing order printout. See, for example, the MNCIS Demos on pages 17-20.

The pages following this table set forth a general explanation for each section, as well as specific explanations for items marked with a number contained within a black bubble (e.g., ❶).

Caption
<ul style="list-style-type: none"> • County • Division ❶ • Judicial District • Case Number • “Order” title ❷ • “Warrant of Commitment” title ❸ • State of Minnesota v. <Defendant’s Name> • Sex • Date of birth • State Identification Number (SID) ❹
Terms of Disposition or Sentence (all items in this section must be listed by count)
<ul style="list-style-type: none"> • Date Pronounced • Order type <ul style="list-style-type: none"> ○ Suggested types are: Original Order, Amended Order, Resentence, Correction, Probation Violation, Probation Revocation, Other (with identification) • Non-conviction dispositions ❺ <ul style="list-style-type: none"> ○ Count Number ○ Indicate whether dismissed or acquitted • Offense ❻ <ul style="list-style-type: none"> ○ Count Number ○ Offense Date ○ Statute type (e.g. charge, penalty) ○ Statute number and description ○ MOC ○ GOC ○ Controlling Agency(ies) ○ Control Number(s) ○ Indicate whether charge has been reduced or amended ○ Disposition (e.g., adjudicated guilty, stay of adjudication) ❼ <ul style="list-style-type: none"> • If probation before conviction pursuant to Minn. Stat. §§ 152.18 or 609.3751, stay of adjudication, or continued for dismissal, indicate length of stay, and include the following text: “Successful completion of probation will result in dismissal.”

Terms of Disposition or Sentence (cont'd)

- Sentence:
 - Level of sentence ③
 - Sentencing possibility ⑨
 - Stay of imposition, including length of stay ① ⑩
 - If the offense is a felony or gross misdemeanor, include the following text: “Successful completion of probation will result in a misdemeanor conviction.”
 - If the offense is a misdemeanor, and it is the local practice to vacate and dismiss, include the following text: “Successful completion of probation will result in vacation of plea and dismissal of charge.”
 - Commitment to the Commissioner of Corrections ① ①
 - Term of incarceration
 - If sentence is executed, include the following language, with appropriate calculations to fill in the blanks: “The sentence consists of a minimum term of imprisonment equal to two-thirds of the total executed sentence (___), and a maximum supervised release term equal to one-third of the total executed sentence (___).”
 - Stay of execution, including length of stay
 - If stay for an adult offender, indicate the number of years
 - If stay for an EJJ offender, state “until the EJJ offender’s 21st birthday provided the juvenile does not violate the juvenile disposition or commit a new offense.”
 - Sex offender conditional release term
 - Felony DWI conditional release term
 - Jail confinement ① ②
 - Total jail term
 - Stay of execution, indicating whether full or partial stay, and including length of stay
 - Other (option for free text entry of sentence to allow for creative sentencing – i.e., staggered sentence) ① ③
 - Indication that sentence is/is not a departure
 - If yes, include bolded statement: “Attach departure report and file with the Sentencing Guidelines Commission within 15 days.”
 - Indication that multiple sentences are consecutive/concurrent, including count number(s) or file number(s) to identify other sentence(s)

Terms of Disposition or Sentence (cont'd)

- Financial Obligations **1 4**
 - Set forth any fines/fees/surcharges ordered
 - Allow fine, surcharge, and assessment fees to be stayed, waived or suspended, and if stayed, indicate length of stay
 - Stayed/waived/suspended options not necessary for other financial obligations
 - For restitution, indicate whether it is to be determined, reserved, or joint and several with other offenders. If reserved, state “Reserved for <#> days” or “Reserved indefinitely.” Do not list victim(s) to which restitution is owed
 - Do not include public defender co-payment

Conditions (items in this section may be listed by case)

- Indicate whether defendant is placed on probation **1 5**
 - Supervised vs. unsupervised
 - If supervised, include agency
- Set forth any conditions of probation (if placed on probation) or stay ordered
 - Community service, sentence to service, and electronic home monitoring should be available as both independent conditions and as service in lieu or jail or fine
 - For staggered sentencing, include a condition such as: “Defendant shall serve 30 days remote electronic alcohol monitoring each year of probation”²
 - Indicate whether defendant may serve conditional jail on Huber (work release), on weekends, or whether the court is allowing a furlough for any period of the confinement
 - Need general condition stating: “Defendant shall follow all conditions set forth in the probation agreement” **1 6**
 - For evaluation(s)/program(s), include general language: “Defendant shall complete the following evaluation(s)/program(s) and follow all recommendations” **1 7**
 - Do not list victim’s name if no contact condition is ordered
 - Include predatory offender registration order as: “Defendant shall register as a predatory offender as provided in Minn. Stat. § 243.166”
 - Include biological specimen order as: “Defendant shall provide a biological specimen as provided in Minn. Stat. § 609.117 and 609.119”

Total Financial Obligations (aggregated by case) 1 8

- Total amount due (less any stayed amounts)
- Payment terms (e.g., date due, installment or in full, consequences for failure to pay)
- Indicate whether court has ordered that bail be applied to imposed amounts pursuant to Minn. Stat. § 629.53

² See Minn. Stat. § 169A.275.

Reporting Information ① ⑨
<ul style="list-style-type: none"> • Instructions for reporting to local jail including location, date, and time
Credit for Time Served ② ⑩
<ul style="list-style-type: none"> • Number of days
Signature Block ② ⑪
<ul style="list-style-type: none"> • Judge's name, signature, and date • No defendant's signature • Identify court administrator • Space for court administrator seal • Local phone number to call for information • Comments section

Explanation of Elements

Caption:

The caption of the document was designed to contain the minimum information necessary to identify the case for all affected members in the criminal justice system. Specific decisions were made with regard to the following elements:

- ❶ “Division” was added to assist larger counties in identifying the court in which the order was issued. It can be left blank or left off completely for those courts that are not subdivided.
- ❷ The document has been titled “Order” to accommodate those situations in which a final sentence will not be issued (e.g., stay of adjudication).
- ❸ The subcommittee intended this document to function as a warrant of commitment when appropriate. It is anticipated that this terminology will only print out when selected by the user (or possibly according to default conditions). The subcommittee found that the identified elements are sufficient for it to serve as a warrant of commitment for the department of corrections, and for many local jails and facilities. However, it should be recognized that additional information may be needed in some locations. See also “Reporting Information” section prior to the signature block.
- ❹ The SID, or State Identification Number, is a unique identifier assigned by the BCA. The number is used by many members of the criminal justice system to identify the individual offender.

The subcommittee did discuss possible inclusion of the defendant’s address and phone number to assist probation, but chose not to include that information because it would not necessarily be correct or current. Additionally, the subcommittee received a request to include the MNCIS ID number on the order. Because this number is not currently available, it was not identified as an essential element of sentencing. However, it was noted that there should be a continuing process for determining whether information should be added to the order as new requirements are imposed (e.g., legislative requirements), or removed from the order as electronic integrations are established between and among criminal justice partners.

Terms of Disposition or Sentence:

The section entitled “Terms of Disposition or Sentence” consists of four main parts: 1) general information identifying the type of order and disposing of counts for which there was a non-conviction disposition; 2) information identifying the count number and offense; 3) the terms of sentence (or an indication that imposition is stayed) by count; and 4) the financial obligations by count. The MNCIS order design should repeat the sections setting forth the offense, sentence, and financial obligations for each count. See, for example, MNCIS Demo # 1. Specific decisions made with regard to the elements in this section were as follows:

- ⑤ The “Non-Conviction Dispositions” section is designed to be a quick and easy method of disposing of the counts that were dismissed or for which the defendant was acquitted. This comports with the MNCIS Uniform Court Practice (UCP) requiring a disposition for every count, without adding a great deal of detail about the charged offense.
- ⑥ It is anticipated that the sentencing order produced by MNCIS will show all statutes relating to the charge, including the penalty statute. The presentation format could be designed to mirror the proposed format for the charge on the criminal complaint (which is currently in the process of revision).

MOC refers to the Minnesota Offense Code originally passed to the court by the prosecutor with the charging offense information. The MOC will not be updated in MNCIS, even if the charge is amended or reduced. GOC refers to the General Offense Code.

The subcommittee chose not to include a field indicating the level of offense (i.e., felony, misdemeanor) because members felt it was not necessary to the sentence, and because they were concerned that the level could prejudice those defendants who receive a lesser sentence (i.e., misdemeanor sentence for a felony-level offense), especially with regard to interpretation by non-criminal justice system persons such as landlords and potential employers. This information will continue to be captured in MNCIS, however. Exclusion of this information from the sentencing order will require an amendment to Minn. R. Crim. P. 27.03, subd. 6. See section entitled Proposed Amendments.

- ⑦ “Disposition” captures the outcome for each offense. The subcommittee identified the most common dispositions as “Adjudicated Guilty,” “Probation Before Conviction (152.18 or 609.3751) for <length of stay>,” “Stay of Adjudication for <length of stay>,” and “Continued for Dismissal for <length of stay>.” MNCIS contains a longer list of potential dispositions, and it is anticipated that whatever disposition type is tracked in the system will be printed in this location.

Each disposition type is mutually exclusive, so only one should be chosen for each count. For those dispositions that would not result in a sentence and/or financial obligations, it is anticipated that MNCIS would produce an order that excludes those sections. See, for example, MNCIS Demo #3.

The subcommittee chose to include an explanation that successful completion of probation could result in dismissal for a stay of adjudication, diversion pursuant to Minn. Stat. §§ 152.18 or 609.3751, and continuance for dismissal as an informational item only. To date, the court has not had a practice of automatically initiating the dismissal without some affirmative action by the parties or probation. However, because interest in that procedure was expressed during the

feedback phase of this project, the subcommittee has requested that MNCIS incorporate functionality to initiate an automatic dismissal at the end of the period of probation if there have been no new violations. This is similar to the functionality already under development in MNCIS to initiate an automatic discharge at the end of the period of probation following a stay of imposition or execution if there have been no new violations.

Originally, the subcommittee did not anticipate that “Continued for Dismissal” would be a disposition option because that procedure usually involves an agreement by the parties that is filed and ordered by the court; thus, a sentencing order would not be necessary. See Minn. R. Crim. P. 27.05. However, because the disposition was requested during the feedback phase of this project, the subcommittee has included it, but notes that it may not be necessary to utilize the sentencing order when the parties submit an agreement in order form for the court’s signature.

- ⑧ “Level of sentence” indicates the conviction level as indicated by the sentence or stay of imposition. MNCIS will calculate the level of sentence automatically based on the court’s pronouncement. For stays of imposition, the level of sentence will be equal to the offense level until the defendant successfully completes probation, at which time the level of sentence will be updated in the system according to Minn. Stat. § 609.13.

The possible sentence levels include petty misdemeanor for those cases in which a petty misdemeanor sentence is imposed for a misdemeanor-level offense. See Minn. R. Crim. P. 23.02. See the discussion under the section entitled Scope of Use regarding use of the order for misdemeanor offenses.

- ⑨ This section sets forth the sentencing possibilities for those cases in which sentence is imposed or imposition is stayed. The bulleting indentation indicates information that should be grouped together on the printout if so ordered.
- ⑩ For a stay of imposition, language indicating that successful completion of probation will result in a misdemeanor conviction or vacation of plea and dismissal is added for informational purposes only. The reduction to a misdemeanor occurs automatically by statute, see Minn. Stat. § 609.13, and MNCIS will automatically adjust the conviction level upon successful completion of a stay of imposition. However, vacation and dismissal is a non-statutory procedure invented by criminal justice participants, and its use varies by locality. It is not anticipated that vacation of the plea and dismissal will occur without some affirmative action by the court or parties.
- ⑪ The commitment language includes an explanation of the 2/3-1/3 split between minimum time served and maximum supervised release as required by Minn. Stat. § 244.101, subd. 2. It is hoped that MNCIS will be able to calculate this split automatically. The stay of execution language includes a reference to the EJJ

offender because a sentencing order must also be produced for the adult stayed sentence in EJJ cases. Minn. R. Juv. Del. P. 19.10, subd. 5. It is anticipated that in the rare instance in which a life sentence is ordered, the terms “life” or “life without parole” could be inserted in place of the number of months. MNCIS also tracks the specific DOC location to which the defendant has been ordered to be committed; therefore, that information can also be included here.

- ① ② The jail sentence language should allow for a partial stay. However, the total amount of time originally ordered will be used to define the sentence level. MNCIS also tracks the specific jail to which the defendant has been ordered to be confined; therefore, that information could also be included here.
- ① ③ The subcommittee felt a free-text option should be included to allow for creative sentencing such as staggered sentencing.
- ① ④ As indicated above, the subcommittee determined that financial obligations must be captured by count. Therefore, this section should contain only those financial obligations that apply to the offense identified in the offense section. The subcommittee identified the most common financial obligations as the fine, surcharge, assessment fees, restitution, law library fee, court costs, booking fee, and prosecution costs. MNCIS may include a much more extensive list of possible financial obligations.

It is unclear whether the criminal/traffic surcharge should be charged by case or by count. If one surcharge is applied to the case, it can be shown on the first count only, and shown as zero for additional counts. Alternatively, a surcharge amount can be shown for each count. It should be noted that the subcommittee felt the order should allow for the surcharge to be stayed, waived, or suspended even though such activity is prohibited by Minn. Stat. § 357.021, subd. 6.

The subcommittee did not specifically discuss how it would define the terms “stayed,” “waived,” and “suspended” with regard to the fine, surcharge, and assessment fees. The options should not be necessary for the other financial obligations because it was felt they are “all or nothing” obligations; that is, they are obligations that would only be included if the court chose to order them.

The booking fee should be included on this order because it seems to be ordered frequently and because Minn. Stat. § 641.12, subd. 1 states, “the district court must order the fee paid to the sheriff’s department as part of any sentence or disposition imposed.”

The subcommittee engaged in a lengthy discussion regarding the inclusion of restitution on the sentencing order. Some felt the order should contain more detail about restitution, including the identity of the victim(s), the amount(s) to be paid, and the terms of payment. Others felt that the purpose of this order was simply to document the fact that restitution was ordered, reserved, or ordered to be

determined, and felt instead that a restitution order should be issued to address that level of detail. Ultimately, the subcommittee chose the latter course, and noted that a form order for restitution has been created for judges and resides on CourtNet.

The subcommittee also engaged in a lengthy discussion about whether public defender reimbursement should be included in the financial obligations section. Some felt that such reimbursement is ordered at the time of sentencing frequently enough that it should be captured on the order as a matter of convenience. Others objected to inclusion because the obligation is not part of the individual's sentence, and because the obligation is not one for which nonpayment will result in a probation violation. Ultimately, the subcommittee agreed that the obligation arises from a separate order of the court, and that it therefore does not need to be on the sentencing order.

Similarly, the subcommittee discussed whether the public defender co-payment should be captured on this order. Some felt it should be included as a matter of convenience, while others felt it should not be included because it is a civil obligation that cannot be made a condition of probation or of the sentence. See Minn. Stat. § 611.17.³ Ultimately, the subcommittee concluded that because the obligation arises from the initial order appointing the public defender, it does not need to be on the sentencing order.

Conditions:

The section entitled “Conditions” is intended to capture additional conditions or other information relating to the sentence or terms of probation or stay. MNCIS already tracks a long list of possible conditions. Only a handful of possible conditions are noted in this section for the following reasons:

- 1 5 The probation language clarifies whether the defendant has been placed on probation, and if so, to whom. No provision was made to indicate the length of probation, thus presuming that the length of probation is equal to the length of stay.
- 1 6 The subcommittee engaged in a great deal of discussion regarding the language to “follow all conditions set by the probation agreement.” Several recent appellate cases have made it unclear how detailed the court must be in pronouncing the conditions of probation, and have intimated that this type of language could be an impermissible delegation of court authority. See *State v. Ornelas*, 675 N.W.2d 74 (Minn. 2004); *State v. Henderson*, 527 N.W.2d 827 (Minn. 1995); *State v. Maidi*, 537 N.W.2d 280 (Minn. 1995). Additionally, the subcommittee recognized that

³ It should be noted that the co-payment established by the 2003 legislation (see Minn. Stat. § 611.17, subd. 1(c) (Supp. 2003)) was declared by the Supreme Court to be unconstitutional in *State v. Tennin*, No. A03-1281, 674 N.W.2d 403 (Minn. 2004). The judicial branch has interpreted that to mean that the \$28 co-payment that existed in the 2002 version of the statute has been revived. See Minn. Stat. § 611.17(c) (2002).

probation authorities must have authority to set general conditions of probation such as setting the schedule for reporting to the probation officer, requiring the probationer to keep the officer informed of his or her employment and residence, and submitting to unscheduled home visits. The subcommittee felt the best balance between the uncertain state of the law and the practical needs of probation was to include this language referencing the probation agreement, because the probation agreement content is relatively standard across the state.

- ① ⑦ The subcommittee was similarly concerned about including language requiring the defendant to “follow all recommendations” following evaluations. Some members noted that evaluations should be completed prior to sentencing, and if not, the court should schedule an additional court appearance to determine whether to order treatment following the evaluation. Others agreed the process was sound, but stated it is not a reality in the courtroom. Ultimately, a majority opted to include the “follow all recommendations language,” though they remained concerned that this might raise the same issue regarding the impermissible delegation of court authority as might be raised with the “follow all conditions set by the probation agreement” language.

Total Financial Obligations: ① ⑧

This section serves to aggregate the total amount of all financial obligations due. Although it is anticipated that the section could indicate the payment terms, these may not be known at the time of sentencing, or the court may opt to provide the defendant with a separate, more detailed form explaining them. Additionally, because the financial manager for MNCIS is still in development, it is uncertain whether MNCIS will be able to include the payment terms on the sentencing order. Thus, this section is likely to be subject to change.

Reporting Information: ① ⑨

Subcommittee members expressed a desire to include instructions to the defendant for reporting to the local jail. However, an assessment would need to be completed to determine whether this is information that is known at the time of sentencing and can therefore be inputted electronically by the court user, or whether it should simply appear as a template that can be filled out by hand when known.

Credit for Time Served: ② ⑩

This section stands on its own for several reasons. First, it is extremely important information for the defendant, prisons, and jails, so it is placed at the end of the order to stand out. Second, it is typically pronounced toward the end of sentencing, so this placement seemed logical. Third, credit for time served can apply to either a term of incarceration imposed as part of the sentence or to conditional jail time, so it seemed to make sense to place it apart from both sections to indicate that the amount could be applied to either. Some members of the subcommittee felt jail credit should exist in several places on the order – near the term of incarceration and near the term of conditional jail – and that this placement would be either confusing or difficult to locate.

It should be noted that in MNCIS, credit for time served is captured on each MNCIS entry screen relating to incarceration (whether prison or jail).

Also with regard to this issue, the subcommittee received feedback about the frustration experienced when credit for time served is not pronounced at the time of sentencing. Some commentators asked whether the subcommittee could do anything to require its pronouncement such as setting up the record-keeping system so that it will not allow completion of an order without credit for time served. The subcommittee recognized that the issue is one that impacts, and is impacted by, all criminal justice partners, and that its resolution is beyond the scope of this project. Therefore, the issue has been referred to the MNCIS Steering Committee for further discussion.

Signature Block: ❷❶

Both Minn. R. Crim. P. 27.03, subd. 6 and Minn. R. Juv. P. 19.10, subd. 5 currently require the defendant's or juvenile's signature on the sentencing order. However, the subcommittee rejected this idea for several reasons. First, obtaining the signature poses a process problem in that an original must be printed, the signature must be obtained, and then several copies must be made – none of which can be accomplished easily in real time in the courtroom. Second, there was concern that the defendant's signature implies an understanding on the part of the defendant that may not reflect reality. Therefore, the subcommittee will recommend that the rules be amended to eliminate the defendant's or juvenile's signature. The subcommittee did agree, however, that the document should contain the judge's signature because it is an order, and because the court should take responsibility for ensuring that the order reflects what was actually said.

Proposed Amendments

The subcommittee took a clean-slate approach to determining the elements of the sentencing order. As a result of this approach, the subcommittee determined that two elements required by Minn. R. Crim. P. 27.03, subd. 6 and Minn. R. Juv. Del. P. 19.10, subd. 5 should be eliminated: the level of offense, and the defendant's or juvenile's signature. A full discussion of these decisions is contained within the section entitled Explanation of Sentencing Elements. In addition, the subcommittee determined that the sentencing order should only be required for counts for which the offense level prior to sentencing was a felony or gross misdemeanor. A full discussion of this decision is in the section entitled Scope of Use. In accordance with these decisions, the subcommittee recommends amending Minn. R. Crim. P. 27.03, subd. 6 and Minn. R. Juv. Del. P. 19.10, subd. 5 as follows:

Minn. R. Crim. P. 27.03, subd. 6:

Subd. 6. Record. (A) A verbatim record of the sentencing proceedings shall be made. The defendant, prosecution, or any person may, at their expense, order a transcript of the verbatim record made in accordance with this rule.

(B) Information from the sentencing proceeding for counts for which the offense level prior to sentencing was a felony or gross misdemeanor shall also be recorded in a sentencing ~~form or order~~ that, at a minimum, contains:

- (1) the defendant's name;
- (2) case number;
- (3) for each count:

a. if the defendant pled guilty to or was found guilty of the offense:

- i. the offense date;
- ii. a citation to the offense statute ~~and level of offense~~;
- iii. the information specified in subdivision 4 (precise terms of sentence including the amount of any fine, time spent in custody, whether the sentence is a departure and if so, the reasons therefor, and terms and conditions of probation);
- iv. the level of sentence; and
- v. restitution, if appropriate, and whether it shall be joint and

several with other persons; or

b. if the defendant did not plead guilty to or was not found guilty of the offense, that the defendant was acquitted or the count was dismissed;

- (4) other financial obligations such as surcharges, law library fees, court costs, and treatment evaluation costs; and
- (5) the signatures of the sentencing judge ~~and defendant~~.

The sentencing ~~form or~~ order shall be provided in place of the transcript required in Minnesota Statutes sections 243.49 and 631.41.

Minn. R. Juv. Del. P. 19.10, subd. 5:

Subd. 5. Record of Proceedings.

(A) Upon a plea of guilty after a child has been determined to be an Extended Jurisdiction Juvenile, a verbatim record shall be made of the plea and sentencing proceedings.

(B) A record of the adult stayed sentence shall also be recorded in a sentencing ~~form or order~~ that, at a minimum, contains:

(1) the child's name;

(2) case number;

(3) for each count:

(a) if the child plead guilty to or was found guilty of the offense:

(i) the offense date;

(ii) a citation to the offense statute ~~and level of offense~~;

(iii) the precise terms of the adult criminal sentence, and that execution has been stayed;

(iv) the level of sentence; and

(v) the amount of time spent in custody, if any; or

(b) if the child did not plead guilty to or was not found guilty of the offense, that the child was acquitted or the count was dismissed; and

(4) the signatures of the sentencing judge ~~and child~~.

Where venue is transferred as provided in subdivision 4, a copy of the sentencing ~~form or~~ order shall be filed with the transferring court.

**** MNCIS Demo #1 - Sentencing Order Showing Multiple Counts ****

State of Minnesota

District Court

County Itasca	Division
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Judicial District 9 th	Case Number 12345678910
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State of Minnesota,

ORDER

vs.

John Doe, Defendant.

Sex: M

DOB: 01/30/1964

SID: 987654321

TERMS OF DISPOSITION OR SENTENCE

Date Pronounced: 04/30/2004

Type: Original Order

Non-Conviction Dispositions: Count Numbers 2, 4 Dismissed

OFFENSE:

Ct. No.	Statute Type	Offense Date	Statute Number & Description	MOC	GOC	Controlling Agencies	Control Number(s)
1	Charge	11/23/03	609.221, subd. 1 Assault – 1st Degree	A2232	N	MN0020300	00443572

Disposition: Adjudicated Guilty

SENTENCE:

Level of Sentence: Felony

Stay of imposition for 5 years. Successful completion of probation will result in sentence reduction to misdemeanor.

Was this sentence a departure from the sentencing guidelines? Yes	If “Yes” attach departure report and file with the Sentencing Guidelines Commission within 15 days.
-------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------

Sentence is concurrent with count 3.

FINANCIAL OBLIGATIONS:

Fine	\$ 1000
Surcharge	\$ 60
Law Library Fee	\$ 25

OFFENSE:

Ct. No.	Statute Type	Offense Date	Statute Number & Description	MOC	GOC	Controlling Agencies	Control Number(s)
3	Charge	11/23/03	609.72 Disorderly Conduct	N3030	N	MN0020300	00443572

Disposition: Adjudicated Guilty

SENTENCE:

Level of Sentence: Misdemeanor

Stay of imposition for 1 year.

Was this sentence a departure from the sentencing guidelines? No	If “Yes,” attach departure report and file with the Sentencing Guidelines Commission within 15 days.
------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------

Sentence is concurrent with count 1.

FINANCIAL OBLIGATIONS:

Surcharge	\$ 60
Assessment	\$ 100

CONDITIONS

Defendant is placed on probation, supervised by community corrections.

10 days in jail as a condition of probation.

May serve on weekends.

Defendant shall complete the following evaluation(s)/program(s):

Anger Management

Defendant shall seek/maintain employment/school.

Defendant shall remain law abiding.

Defendant shall commit no same or similar offenses.

Total Amount Financial Obligations Due: \$ 1245

Apply bail to all imposed amounts, refund any balance as authorized by Minn. Stat. § 629.53

Credit for Time Served: 3 days.

SIGNATURE

Judge: Hon. Jane Smith

(Signature)

Date: _____

Court Administrator: Jim Smith

Phone: (123) 456-7890

**** MNCIS Demo #2 - Sentencing Order Showing Single Count, Executed Felony Sentence, and No Conditions ****

State of Minnesota

District Court

County Itasca	Division
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Judicial District 9 th	Case Number 12345678910
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State of Minnesota,

ORDER

vs.

Warrant of Commitment

John Doe, Defendant.

Sex: M

DOB: 01/30/1964

SID: 987654321

TERMS OF DISPOSITION OR SENTENCE

Date Pronounced: 04/30/2004

Type: Original Order

Non-Conviction Dispositions: Count Number 2 Acquitted

OFFENSE:

Ct. No.	Statute Type	Offense Date	Statute Number & Description	MOC	GOC	Controlling Agencies	Control Number(s)
1	Charge	11/23/03	609.221, subd. 1 Assault – 1st Degree	A2232	N	MN0020300	00443572

Disposition: Adjudicated Guilty

SENTENCE:

Level of Sentence: Felony

Committed to the custody of the Commissioner of Corrections for 7 years. *The sentence consists of a minimum term of imprisonment equal to two-thirds of the total executed sentence (56 months), and a maximum supervised release term equal to one-third of the total executed sentence (28 months).*

Was this sentence a departure from the sentencing guidelines? No	If "Yes," attach departure report and file with the Sentencing Guidelines Commission within 15 days.
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FINANCIAL OBLIGATIONS:

Fine	\$ 5000
Surcharge	\$ 60
Law Library Fee	\$ 25

Total Amount Financial Obligations Due: \$ 5085

Credit for Time Served: 30 days.

SIGNATURE

Judge: Hon. Jane Smith

Date: _____

(Signature)

Court Administrator: Jim Smith

Phone: (123) 456-7890

**** MNCIS Demo #3 - Sentencing Order Showing Stay of Adjudication, No Sentence, No Financial Obligations ****

State of Minnesota

District Court

County Itasca	Division
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Judicial District 9 th	Case Number 12345678910
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State of Minnesota,

ORDER

vs.

John Doe, Defendant.

Sex: M

DOB: 01/30/1964

SID: 987654321

TERMS OF DISPOSITION OR SENTENCE

Date Pronounced: 04/30/2004

Type: Original Order

OFFENSE:							
Ct. No.	Statute Type	Offense Date	Statute Number & Description	MOC	GOC	Controlling Agencies	Control Number(s)
1	Charge	11/23/03	609.72, subd. 1(1) Disorderly Conduct	N3030	N	MN0020300	00443572

Disposition: Stay of Adjudication for 90 days.

CONDITIONS

Defendant is placed on probation, unsupervised.

Defendant shall complete the following evaluation(s)/program(s):
Anger Management

Defendant shall seek/maintain employment/school.

Defendant shall remain law abiding.

Defendant shall commit no same or similar offenses.

SIGNATURE

Judge: Hon. Jane Smith

Date: _____

(Signature)

Court Administrator: Jim Smith

Phone: (123) 456-7890

Non-MNCIS Sample Order

The charge from the Supreme Court to the Sentencing Forms Subcommittee was to develop a statewide sentencing form or order to be completed and implemented with the MNCIS rollout. Thus, use of the sentencing order developed in MNCIS will not be mandatory in non-MNCIS counties. However, the subcommittee has prepared the following sample form to demonstrate how the elements noted in this report could be included on an interim paper format for non-MNCIS counties. This sample form can also be generated online as a Word document. Courts in non-MNCIS counties are encouraged to utilize this sample form, or to create their own form following the guidelines set out in this report, to ensure that all of the information from sentencing that is needed for the purposes identified in this report is recorded and provided to the defendant and our criminal justice partners.

State of Minnesota

District Court

County	Division
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Judicial District	Case Number
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State of Minnesota, vs.

ORDER

Warrant of Commitment

Defendant. Sex: DOB: SID:

TERMS OF DISPOSITION OR SENTENCE

Date Pronounced:

Type: Original Order, Resentence, Probation Violation (reinstate), Other, Amended Order, Correction, Probation Revocation (stay revoked)

Non-Conviction Dispositions: Count Number(s): Dismissed, Acquitted

OFFENSE: Amended, Reduced

Ct. No.	Offense Date	Statute Number & Description	MOC	GOC	Controlling Agencies	Control Number(s)

Disposition: Adjudicated Guilty, Other, Probation Before Conviction (152.18 or 609.3751) for years/months/days, Stay of Adjudication for years/months/days, Continued for Dismissal for years/months/days, Successful completion of probation will result in dismissal

SENTENCE:

Level of Sentence: Felony, Gross Misdemeanor, Misdemeanor, Petty Misdemeanor

Stay of imposition for years/months/days. Successful completion of probation will result in: misdemeanor conviction, vacation of plea and dismissal of charge.

Committed to the custody of the Commissioner of Corrections for months, one year and one day. The sentence consists of a minimum term of imprisonment equal to two-thirds of the total executed sentence (), and a maximum supervised release term equal to one-third of the total executed sentence (). Execution of the sentence is stayed for years until the EJJ offender's 21st birthday provided the juvenile does not violate the juvenile disposition or commit a new offense. Sex offender conditional release pursuant to Minn. Stat. § 609.109, subd. 7: 5 years, 10 years. Felony DWI conditional release pursuant to Minn. Stat. § 169A.24: 5 years

Sentenced to jail/workhouse for days/months at this location: , of which execution of days/months will be stayed for years/months/days. Electronic home monitoring, work release, immediately, after days served.

Other:

Was this sentence a departure from the sentencing guidelines? Yes, No. If "Yes," attach departure report and file with the Sentencing Guidelines Commission within 15 days.

Sentence is concurrent with: consecutive to:

FINANCIAL OBLIGATIONS:

Fine, Surcharge, Assessment, Restitution, Law Library Fee, Court Costs, Booking Fee, Prosecution Costs, Waived, Suspended, TBD, Reserved for days, Joint/several with: Other: \$

CONDITIONS

- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Defendant is placed on probation
<input type="checkbox"/> Supervised by: <input type="checkbox"/> Dept. of Corrections
<input type="checkbox"/> Court Services
<input type="checkbox"/> Community Corrections
<input type="checkbox"/> Court
Agency Name: _____
<input type="checkbox"/> Unsupervised
<input type="checkbox"/> _____ days in jail as a condition of probation
<input type="checkbox"/> Work release (Huber) if qualified
<input type="checkbox"/> May serve on weekends
<input type="checkbox"/> Furlough for _____
<input type="checkbox"/> In lieu of fine/jail, defendant may:
<input type="checkbox"/> Perform _____ days Sentence to Service if qualified
<input type="checkbox"/> Participate in work release (Huber) if qualified
<input type="checkbox"/> Perform _____ hours/days community service
<input type="checkbox"/> Serve by electronic home monitoring
<input type="checkbox"/> immediately <input type="checkbox"/> after _____ days
<input type="checkbox"/> Defendant shall serve 30 days remote electronic alcohol monitoring each year of probation
<input type="checkbox"/> Electronic home monitoring for _____ days
<input type="checkbox"/> with alco-sensor
<input type="checkbox"/> Perform _____ days Sentence to Service if qualified
<input type="checkbox"/> Perform _____ hours/days community service
<input type="checkbox"/> Defendant shall have no contact with the victim
<input type="checkbox"/> Defendant shall provide a biological specimen as provided in Minn. Stat. §§ 609.117 and 609.119
<input type="checkbox"/> Defendant shall register as a predatory offender as provided in Minn. Stat. § 243.166 | <input type="checkbox"/> Defendant shall follow all conditions set forth in the probation agreement
<input type="checkbox"/> Defendant shall pay all financial obligations not stayed, waived, or suspended
<input type="checkbox"/> Defendant shall remain law abiding
<input type="checkbox"/> Defendant shall commit no same or similar offenses
<input type="checkbox"/> Defendant shall not use or possess alcohol or drugs (except medication prescribed by a physician)
<input type="checkbox"/> Defendant shall submit to random testing
<input type="checkbox"/> Defendant shall not own, use, or possess a firearm
<input type="checkbox"/> Defendant shall seek/maintain employment/school
<input type="checkbox"/> Defendant shall complete the following evaluation(s)/program(s) and follow all recommendations:
<input type="checkbox"/> Domestic Abuse _____
<input type="checkbox"/> Predatory Offender _____
<input type="checkbox"/> Chemical Dependency _____
<input type="checkbox"/> Psychological _____
<input type="checkbox"/> Cognitive Skills _____
<input type="checkbox"/> Counseling _____
<input type="checkbox"/> Other: _____
<input type="checkbox"/> Other: _____
<input type="checkbox"/> Other: _____
<input type="checkbox"/> Other: _____
<input type="checkbox"/> Other: _____
<input type="checkbox"/> Other: _____ |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Total Amount Financial Obligations Due: \$ _____

Payment Terms:

- Apply bail to all imposed amounts, refund any balance as authorized by Minn. Stat. § 629.53

Report to _____ (location) on _____ (date) at _____ (time)

Credit for Time Served: _____ days.

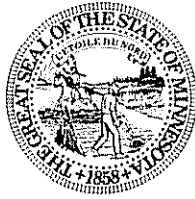
SIGNATURE

Judge: _____ Date: _____
(Printed Name) (Signature)

Court Administrator: _____ Phone: _____

Comments:

Seal:



OFFICE OF
APPELLATE COURTS

APR 20 2005

FILED

**STATE OF MINNESOTA
STATE PUBLIC DEFENDER**

John M. Stuart
State Public Defender

331 Second Avenue South
Suite 900
Minneapolis, MN 55401

(612) 349-2565
FAX (612) 349-2568
john.stuart@pubdef.state.mn.us

April 19, 2005

Mr. Frederick Grittner, Clerk of the Appellate Courts
305 Judicial Center
25 Rev. Dr. Martin Luther King, Jr., Boulevard
St Paul MN 55155

Dear Mr. Grittner:

RE: Proposed Sentencing Form

On April 15 I met with all the District Chief Public Defenders and the Deputy State Public Defender. We all believe that the new form should include the accurate determination of jail credit that is already mandated by Rule 27.03.

It is a cause of considerable frustration to clients, and cumbersome reconstructive work after an individual has been incarcerated, to have jail credit left up in the air at the time of sentencing. We want this issue to be cleared up while all parties are in the courtroom, and the new era of sentencing form practice we are about to begin is the perfect opportunity to bring about this important procedural reform.

Thank you for your consideration of this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "John M. Stuart".

John Stuart
State Public Defender