

PRELIMINARY PROPOSAL FOR PROCEDURES IN RESPONSE TO BLAKELY
Supreme Court Advisory Committee on Rules of Criminal Procedure

1. Rule 1.04. Definitions

Amend Rule 1.04 by adding a new paragraph (d) as follows:

(a) Clerk of Court. References in these rules to clerks or deputy clerks of court shall include court administrators and deputy court administrators.

(b) Designated Gross Misdemeanors. As used in these rules, the term "designated gross misdemeanors" refers to gross misdemeanors charged or punishable under Minnesota Statutes, section 169A.20, Minnesota Statutes, section 169A.25, Minnesota Statutes, section 169A.26 or Minnesota Statutes, section 171.24.

(c) Tab Charge. As used in these rules, the term "tab charge" is a brief statement of the offense charged including a reference to the statute, rule, regulation, ordinance, or other provision of law which the defendant is alleged to have violated which the clerk shall enter upon the records. A tab charge is not synonymous with "citation" as defined by Rule 6.01.

(d) Aggravated Sentence. As used in these rules, the term "aggravated sentence" refers to a sentence that is an upward durational or dispositional departure from the presumptive sentence provided for in the Minnesota Sentencing Guidelines based upon aggravating circumstances or a statutory sentencing enhancement.

(Note: Include a comment stating that this procedure is not for criminal history-based enhancements.)

2. Create a new Rule 7.03 as follows, and renumber existing Rule 7.03 as Rule 7.04:

Rule 7.03. Notice of Prosecutor's Intent to Seek an Aggravated Sentence

At least seven days prior to the Omnibus Hearing, or as soon thereafter as grounds become known to the prosecuting attorney, the prosecuting attorney shall notify the defendant or defense counsel in writing of intent to seek an aggravated sentence. The notice shall include the grounds or statutes relied upon and a summary statement of the factual basis supporting the aggravated sentence. The court shall disallow a notice given fewer than seven days prior to the Omnibus Hearing if the defendant can establish that such disclosure will unfairly prejudice the defendant's ability to defend against an aggravated sentence.

(Note: Include a comment that this procedure also covers updated or amended notices.)

3. Rule 9.01. Disclosure by Prosecution

Amend Rule 9.01, subd. 1 as follows:

Subd. 1. **Disclosure by Prosecution Without Order of Court.** Without order of court and except as provided in Rule 9.01, subd. 3, the prosecuting attorney on request of defense counsel shall, before the date set for Omnibus Hearing provided for by Rule 11, allow access at any reasonable time to all matters within the prosecuting attorney's possession or control which relate to the case and make the following disclosures:

(1) *Trial Witnesses; Grand Jury Witnesses; Other Persons.*

(a) The prosecuting attorney shall disclose to defense counsel the names and addresses of the persons intended to be called as witnesses at the trial together with their prior record of convictions, if any, within the prosecuting attorney's actual knowledge. The prosecuting attorney shall permit defense counsel to inspect and reproduce such witnesses' relevant written or recorded statements and any written summaries within the prosecuting attorney's knowledge of the substance of relevant oral statements made by such witnesses to prosecution agents.

(b) The fact that the prosecution has supplied the name of a trial witness to defense counsel shall not be commented on in the presence of the jury.

(c) If the defendant is charged by indictment, the prosecuting attorney shall disclose to defense counsel the names and addresses of the witnesses who testified before the grand jury in the case against the defendant.

(d) The prosecuting attorney shall disclose to defense counsel the names and the addresses of persons having information relating to the case.

(2) *Statements.* The prosecuting attorney shall disclose and permit defense counsel to inspect and reproduce any relevant written or recorded statements which relate to the case within the possession or control of the prosecution, the existence of which is known by the prosecuting attorney, and shall provide defense counsel with the substance of any oral statements which relate to the case.

(3) *Documents and Tangible Objects.* The prosecuting attorney shall disclose and permit defense counsel to inspect and reproduce books, grand jury minutes or transcripts, law enforcement officer reports, reports on prospective jurors, papers, documents, photographs and tangible objects which relate to the case and the prosecuting attorney shall also permit defense counsel to inspect and photograph buildings or places which relate to the case.

(4) *Reports of Examinations and Tests.* The prosecuting attorney shall disclose and permit defense counsel to inspect and reproduce any results or reports of physical or mental examinations, scientific tests, experiments or comparisons made in connection with the particular case. The prosecuting attorney shall allow the defendant to have reasonable tests made. If a scientific test or experiment of any matter, except those conducted under Minnesota Statutes, chapter 169, may preclude any further tests or experiments, the prosecuting attorney shall give the defendant reasonable notice and an opportunity to have a qualified expert observe the test or experiment.

(5) *Criminal Record of Defendant and Defense Witnesses.* The prosecuting attorney shall inform defense counsel of the records of prior convictions of the defendant and of any defense witnesses disclosed under Rule 9.02, subd. 1(3)(a) that are known to

the prosecuting attorney provided the defense counsel informs the prosecuting attorney of any such records known to the defendant.

(6) *Exculpatory Information.* The prosecuting attorney shall disclose to defense counsel any material or information within the prosecuting attorney's possession and control that tends to negate or reduce the guilt of the accused as to the offense charged.

(7) Evidence Relating to Aggravated Sentence. The prosecuting attorney shall disclose to the defendant or defense counsel all evidence not otherwise disclosed upon which the prosecutor intends to rely in seeking an aggravated sentence.

(78) *Scope of Prosecutor's Obligations.* The prosecuting attorney's obligations under this rule extend to material and information in the possession or control of members of the prosecution staff and of any others who have participated in the investigation or evaluation of the case and who either regularly report or with reference to the particular case have reported to the prosecuting attorney's office.

(Note: Will also need to draft a comment stating that the continuing duty to disclose also covers evidence relating to an aggravated sentence.)

4. Rule 11.04. Other Issues

Amend Rule 11.04 as follows:

The Omnibus Hearing may include a pretrial dispositional conference to determine whether the case can be resolved without scheduling it for trial. The court shall ascertain any other constitutional, evidentiary, procedural or other issues that may be heard or disposed of before trial and such other matters as will promote a fair and expeditious trial, and shall hear and determine them, or continue the hearing for that purpose as permitted by Rule 11.07.

If the prosecution has given notice under Rule 7.02 of intention to offer evidence of additional offenses, upon motion a hearing shall be held to determine their admissibility under Rule 404(b) of the Minnesota Rules of Evidence and whether there is clear and convincing evidence that defendant committed the offenses.

If the prosecutor has given notice under Rule 7.03 of intent to seek an aggravated sentence, a hearing shall be held to determine whether the law and proffered evidence support an aggravated sentence. If so, the court shall determine whether the issues will be presented to the jury in a unitary or bifurcated trial.

In deciding whether to bifurcate the trial, the court shall consider whether the evidence in support of an aggravated sentence is otherwise admissible in the guilt phase of the trial and whether unfair prejudice would result to the defendant in a unitary trial. A bifurcated trial shall be ordered where evidence in support of an aggravated sentence includes evidence that is inadmissible during the guilt phase of the trial or would result in unfair prejudice to the defendant. If the court orders a unitary trial the court may still order separate final arguments on the issues of guilt and the aggravated sentence.

If the defendant intends to offer evidence of a victim's previous sexual conduct in a prosecution for violation of Minnesota Statutes, sections 609.342 to 609.346, a motion shall be made pursuant to the procedures prescribed by Rule 412 of the Minnesota Rules of Evidence.

(Note: Need to draft comment explaining that the committee chose not to attempt to define what standard the court should use in determining the admissibility of evidence relating to an aggravated sentence.)

5. Rule 15.01. Acceptance of Plea; Questioning Defendant; Felony and Gross Misdemeanor Cases

Amend paragraphs 6, 10, and 15 of Rule 15.01 as follows:

Before the court accepts a plea of guilty, the defendant shall be sworn and questioned by the court with the assistance of counsel as to the following:

1. Name, age and date and place of birth and whether the defendant is handicapped in communication and, if so, whether a qualified interpreter has been provided for the defendant.
2. Whether the defendant understands the crime charged.
3. Specifically, whether the defendant understands that the crime charged is (name of offense) committed on or about (month) (day) (year) in _____ County, Minnesota (and that the defendant is tendering a plea of guilty to the crime of (name of offense) which is a lesser degree or lesser included offense of the crime charged).
4. a. Whether the defendant has had sufficient time to discuss the case with defense counsel.

b. Whether the defendant is satisfied that defense counsel is fully informed as to the facts of the case, and that defense counsel has represented the defendant's interests and fully advised the defendant.
5. Whether the defendant has been told by defense counsel and understands that upon a plea of not guilty, there is a right to a trial by jury and that a finding of guilty is not possible unless all jurors agree.
6. a. Whether the defendant has been told by defense counsel and understands that there will not be a trial by either a jury or by a judge without a jury if the defendant pleads guilty.

b. Whether the defendant waives the right to a trial on the issue of guilt.

c. Whether the defendant waives the right to a trial by a jury or judge without a jury to determine whether facts supporting an aggravated sentence are proved beyond a reasonable doubt.

7. Whether the defendant has been told by defense counsel, and understands that if the defendant wishes to plead not guilty and have a trial by jury or by a judge, the defendant will be presumed to be innocent until guilt is proved beyond a reasonable doubt.

8. a. Whether the defendant has been told by defense counsel, and understands that if the defendant wishes to plead not guilty and have a trial, the prosecutor will be required to have the prosecution witnesses testify in open court in the defendant's presence, and that the defendant will have the right, through defense counsel, to question these witnesses.

b. Whether the defendant waives the right to have these witnesses testify in the defendant's presence in court and be questioned by defense counsel.

9. a. Whether the defendant has been told by defense counsel and understands that if the defendant wishes to plead not guilty and have a trial, the defendant will be entitled to require any defense witnesses to appear and testify.

b. Whether the defendant waives this right.

10. Whether defense counsel has told the defendant and the defendant understands:

a. That the maximum penalty that the court could impose for the crime charged (taking into consideration any prior conviction or convictions) is imprisonment for _____ years.

b. That if a minimum sentence is required by statute the court may impose a sentence of imprisonment of not less than _____ months for the crime charged.

c. That for felony driving while impaired offenses and most sex offenses, a mandatory period of conditional release will be imposed to follow any executed prison sentence, and violating the terms of that conditional release may increase the time the defendant serves in prison.

d. That if the defendant is not a citizen of the United States, a plea of guilty to the crime charged may result in deportation, exclusion from admission to the United States, or denial of naturalization as a United States citizen.

e. That the prosecutor is seeking an aggravated sentence.

11. Whether defense counsel has told the defendant that the defendant discussed the case with one of the prosecuting attorneys, and that the respective attorneys agreed that if the defendant entered a plea of guilty the prosecutor will do the following: (state the substance of the plea agreement.)

12. Whether defense counsel has told the defendant and the defendant understands that if the court does not approve the plea agreement, the defendant has an absolute right to withdraw the plea of guilty and have a trial.

13. Whether, except for the plea agreement, any policeman, prosecutor, judge, defense counsel, or any other person, made any promises or threats to the defendant or any member of the defendant's family, or any of the defendant's friends, or other persons in order to obtain a plea of guilty.

14. Whether defense counsel has told the defendant and the defendant understands that if the plea of guilty is for any reason not accepted by the court, or is withdrawn by the defendant with the court's approval, or is withdrawn by court order on appeal or other review, that the defendant will stand trial on the original charge (charges) namely, (state the offense) (which would include any charges that were dismissed as a result of the plea agreement) and that the prosecution could proceed just as if there had never been any agreement.

15. a. Whether the defendant has been told by defense counsel and understands, that if the defendant wishes to plead not guilty and have a jury trial, the defendant can testify if the defendant wishes, but that if the defendant decided not to testify, neither the prosecutor nor the judge could comment to the jury about the failure to testify.

b. Whether the defendant waives this right, and agrees to tell the court about the facts of the crime and, if applicable, facts establishing grounds for an aggravated sentence.

16. Whether with knowledge and understanding of these rights the defendant still wishes to enter a plea of guilty or instead wishes to plead not guilty.

17. Whether the defendant makes any claim of innocence.

18. Whether the defendant is under the influence of intoxicating liquor or drugs or under mental disability or under medical or psychiatric treatment.

19. Whether the defendant has any questions to ask or anything to say before stating the facts of the crime.

20. What is the factual basis for the plea.

(NOTE: It is desirable that the defendant also be asked to acknowledge signing the Petition to Plead Guilty, suggested form of which is contained in the appendix A to these rules; that the defendant has read the questions set forth in the petition or that they have been read to the defendant, and that the defendant understands them; that the defendant gave the answers set forth in the petition; and that they are true.)

6. Rule 15. Procedure Upon Plea of Guilty; Plea Agreements; Plea Withdrawal; Plea to Lesser Offense

Amend Appendix A to Rule 15 as follows:

APPENDIX A TO MINN. R. CRIM. P. 15

STATE OF MINNESOTA
COUNTY OF _____

IN DISTRICT COURT
_____ JUDICIAL DISTRICT

State of Minnesota,

vs.

PETITION TO ENTER
PLEA OF GUILTY

TO: THE ABOVE NAMED COURT

I, _____, defendant in the above entitled action do respectfully represent and state as follows:

1. My full name is _____. I am _____ years old, my date of birth is _____. The last grade that I went through in school is _____.

2. If filed in my case, I have received, read and discussed a copy of the (Indictment)(Complaint).

3. I understand the charge made against me in this case.

4. Specifically, I understand that I have been charged with the crime of _____ committed on or about (month) (day), (year) in _____ County, Minnesota.

5. I am represented by an attorney whose name is _____ and:

- a. I feel that I have had sufficient time to discuss my case with my attorney.
b. I am satisfied that my attorney is fully informed as to facts of this case.
c. My attorney has discussed possible defenses to the crime that I might have.
d. I am satisfied that my attorney has represented my interests and has fully advised me.

6. I (have)(have never) been a patient in a mental hospital.

7. I (have)(have not) talked with or been treated by a psychiatrist or other person for a nervous or mental condition.

8. I (have)(have not) been ill recently.

9. I (have)(have not) recently been taking pills or other medicines.

10. I (do)(do not) make the claim that I was so drunk or so under the influence of drugs or medicine that I did not know what I was doing at the time of the crime.

11. I (do)(do not) make the claim that I was acting in self-defense or merely protecting myself or others at the time of the crime.

12. I (do)(do not) make the claim that the fact that I have been held in jail since my arrest and could not post bail caused me to decide to plead guilty in order to get the thing over with rather than waiting for my turn at trial.

13. I (was)(was not) represented by an attorney when I (had a probable cause hearing). (If I have not had a probable cause hearing:)

a. I know that I could now move that the complaint against me be dismissed for lack of probable cause and I know that if I do not make such a motion and go ahead with entering my plea of guilty, I waive all right to successfully object to the absence of a probable cause hearing.

b. I also know that I waive all right to successfully object to any errors in the probable cause hearing when I enter my plea of guilty.

14. My attorney has told me and I understand:

a. That the prosecutor for the case against me, has:

- i. physical evidence obtained as a result of searching for and seizing the evidence;
- ii. evidence in the form of statements, oral or written that I made to police or others regarding this crime;
- iii. evidence discovered as a result of my statements or as a result of the evidence seized in a search;
- iv. identification evidence from a line-up or photographic identification;
- v. evidence the prosecution believes indicates that I committed one or more other crimes;
- vi. evidence the prosecution believes supports an aggravated sentence.

b. That I have a right to a pretrial hearing before a judge to determine whether or not the evidence the prosecution has could be used against me if I went to trial in this case, and to determine the admissibility of evidence in support of an aggravated sentence.

c. That if I requested such a pretrial hearing I could testify at the hearing if I wanted to, but my testimony could not be used as substantive evidence against me if I went to trial and could only be used against me if I was charged with the crime of perjury. (Perjury means testifying falsely).

d. That I (do)(do not) now request such a pretrial hearing and I specifically (do)(do not) now waive my right to have such a pretrial hearing.

e. That whether or not I have had such a hearing I will not be able to object tomorrow or any other time to the evidence that the prosecutor has.

15. I have been told by my attorney and I understand:

a. That if I wish to plead not guilty I am entitled to a trial by a jury on the issue of guilt, and all jurors would have to agree I was guilty before the jury could find me guilty.

b. That if I plead guilty I will not have a trial by either a jury or by a judge without a jury.

c. That with knowledge of my right to a trial on the issue of guilt, I now waive my right to a trial.

d. That if the prosecutor is seeking an aggravated sentence, I am entitled to a trial by jury on that issue, and all jurors would have to agree the prosecutor has proven beyond a reasonable doubt facts which support an aggravated sentence.

e. That with knowledge of my right to a trial on the issue of an aggravated sentence, I now waive my right to a trial.

16. I have been told by my attorney and I understand that if I wish to plead not guilty and have a trial by jury or trial by a judge I would be presumed innocent until my guilt is proved beyond a reasonable doubt.

17. I have been told by my attorney and I understand:

a. That if I wish to plead not guilty and have a trial the prosecutor would be required to have the witnesses testify against me in open court in my presence and that I would have the right, through my attorney, to question these witnesses.

b. That with knowledge of my right to have the prosecution's witnesses testify in open court in my presence and questioned by my attorney, I now waive this right.

18. I have been told by my attorney and I understand:

a. That if I wish to plead not guilty and have a trial I would be entitled to require any witnesses that I think are favorable to me to appear and testify at trial.

b. That with knowledge of my right to require favorable witnesses to appear and testify at trial I now waive this right.

19. I have been told by my attorney and I understand:

a. That a person who has prior convictions or a prior conviction can be given a longer prison term because of this.

b. That the maximum penalty that the court could impose for this crime (taking into consideration any prior conviction or convictions) is imprisonment for _____ years. That if a minimum sentence is required by statute the court may impose a sentence of imprisonment of not less than _____ months for this crime.

c. That for felony driving while impaired offenses and most sex offenses, a mandatory period of conditional release will follow any executed prison sentence that is imposed. Violating the terms of this conditional release may increase the time I serve in prison. In this case, the period of conditional release is ____ years.

d. That a person who participates in a crime by intentionally aiding, advising, counseling and conspiring with another person or persons to commit a crime is just as guilty of that crime as the person or persons who are present and participating in the crime when it is actually committed.

e. That my present probation or parole could be revoked because of the plea of guilty to this crime.

f. That the prosecutor is seeking an aggravated sentence of _____ months.

20. I have been told by my attorney and I understand:

a. That my attorney discussed this case with one of the prosecuting attorneys and that my attorney and the prosecuting attorney agreed that if I entered a plea of guilty, the prosecutor will do the following:

(Give the substance of the agreement)

b. That if the court does not approve this agreement:

i. I have an absolute right to then withdraw my plea of guilty and have a trial.

ii. Any testimony that I have given concerning the guilty plea could not be used against me unless I am charged with the crime of perjury based on this testimony.

21. That except for the agreement between my attorney and the prosecuting attorney:

a. No one - including my attorney, any police officer, prosecutor, judge, or any other person - has made any promises to me, to any member of my family, to any of my friends or other persons, in order to obtain a plea of guilty from me.

b. No one - including my attorney, any police officer, prosecutor or judge, or any other person - has threatened me or any member of my family or my friends or other persons, in order to obtain a plea of guilty from me.

22. My attorney has told me and I understand that if my plea of guilty is for any reason not accepted by the court, or if I withdraw the plea, with the court's approval, or if the plea is withdrawn by court order on appeal or other review:

a. I would then stand trial on the original charge (charges).

b. The prosecution could proceed against me just as if there had been no plea of guilty and no plea agreement.

23. My attorney has told me and I understand that if my plea of guilty is accepted by the judge I have the right to appeal, but that any appeal or other court action I may take claiming error in the proceedings probably would be useless and a waste of my time and the court's.

24. My attorney has told me and I understand that a judge will not accept a plea of guilty for anyone who claims to be innocent.

25. I now make no claim that I am innocent.

26. I have been told by my attorney and I understand that if I wish to plead not guilty and have a jury trial:

a. That I could testify at trial if I wanted to but I could not be forced to testify.

b. That if I decided not to testify neither the prosecutor nor the judge could comment on my failure to testify.

c. That with knowledge of my right not to testify and that neither the judge nor the prosecutor could comment on my failure to testify at trial I now waive this right and I will tell the judge about the facts of the crime and, if applicable, facts establishing grounds for an aggravated sentence.

27. My attorney has told me and I understand that if I am not a citizen of the United States this plea of guilty may result in deportation, exclusion from admission to the United States of America or denial of citizenship.

28. That in view of all above facts and considerations I wish to enter a plea of guilty.

Dated this ____ day of _____, ____

DEFENDANT

7. Rule 19.04. Appearance of Defendant Before Court

Amend Rule 19.04, subd. 6 as follows:

Subd. 6. Notice by Prosecuting Attorney.

(1) *Notice of Evidence and Identification Procedures.* When the prosecution has (1) any evidence against the defendant obtained as a result of a search, search and seizure, wiretapping, or any form of electronic or mechanical eavesdropping, (2) any confessions, admissions or statements in the nature of confessions made by the defendant, (3) any evidence against the defendant discovered as the result of confessions, admissions or statements in the nature of confessions made by the defendant, or (4) when in the investigation of the case against the defendant, any identification procedures were followed, including but not limited to lineups or other observations of the defendant and the exhibition of photographs of the defendant or of any other persons, the prosecuting attorney, on or before the date set for defendant's arraignment, shall notify the defendant or defense counsel in writing of such evidence and identification procedures.

(2) *Notice of Additional Offenses.* The prosecuting attorneys shall notify the defendant or defense counsel in writing of any additional offenses the evidence of which may be offered at the trial under any exceptions to the general exclusionary rule. The notice shall be given at the Omnibus Hearing under Rule 11 or as soon thereafter as the offense becomes known to the prosecuting attorney. Such additional offenses shall be described with sufficient particularity to enable the defendant to prepare for trial. The notice need not include offenses for which the defendant has been previously prosecuted, or those that may be offered in rebuttal of the defendant's character witnesses or as a part of the occurrence or episode out of which the offense charged in the indictment arose.

(3) *Notice of Intent to Seek Aggravated Sentence.* At least seven days prior to the Omnibus Hearing, or as soon thereafter as grounds become known to the prosecuting attorney, the prosecuting attorney shall notify the defendant or defense counsel in writing of intent to seek an aggravated sentence. The notice shall include the grounds or statutes relied upon and a summary statement of the factual basis supporting the aggravated sentence. The court shall disallow a notice given fewer than seven days prior to the Omnibus Hearing if the defendant can establish that such disclosure will unfairly prejudice the defendant's ability to defend against an aggravated sentence.

8. Rule 26.01. Trial by Jury or by the Court

Amend Rule 26.01, subd. 1 as follows:

Subd. 1. Trial by Jury.

(1) Right to Jury Trial.

(a) **Offenses Punishable by Incarceration.** A defendant shall be entitled to a jury trial in any prosecution for an offense punishable by incarceration. All trials shall be in the district court.

(b) **Misdemeanors Not Punishable by Incarceration.** In any prosecution for the violation of a misdemeanor not punishable by incarceration, trial shall be to the court.

(2) Waiver of Trial by Jury.

(a) **Waiver ~~Generally on the Issue of Guilt.~~** The defendant, with the approval of the court may waive jury trial on the issue of guilt provided the defendant does so personally in writing or orally upon the record in open court, after being advised by the court of the right to trial by jury and after having had an opportunity to consult with counsel.

(b) **Waiver on the Issue of an Aggravated Sentence.** Where an aggravated sentence is sought by the prosecution, the defendant, with the approval of the court may waive jury trial on the facts in support of an aggravated sentence provided the defendant does so personally in writing or orally upon the record in open court, after being advised by the court of the right to a trial by jury and after having had an opportunity to consult with counsel.

(~~b~~c) **Waiver When Prejudicial Publicity.** The defendant shall be permitted to waive jury trial whenever it is determined that (a) the waiver has been knowingly and voluntarily made, and (b) there is reason to believe that, as the result of the dissemination of potentially prejudicial material, the waiver is required to assure the likelihood of a fair trial.

(3) **Withdrawal of Waiver of Jury Trial.** Waiver of jury trial may be withdrawn by the defendant at any time before the commencement of trial.

(4) **Waiver of Number of Jurors Required by Law.** At any time before verdict, the parties, with the approval of the court, may stipulate that the jury shall consist of a lesser number than that provided by law. The court shall not approve such a stipulation unless the defendant, after being advised by the court of the right to trial by a jury consisting of the number of jurors provided by law, personally in writing or orally on the record in open court agrees to trial by such reduced jury.

(5) **Number Required for Verdict.** A unanimous verdict shall be required in all cases.

(6) **Waiver of Unanimous Verdict.** At any time before verdict, the parties, with the approval of the court, may stipulate that the jury may render a verdict on the concurrence of a specified number of jurors less than that required by law or these rules. The court shall not approve such a stipulation unless the defendant, after being advised

by the court of the right to a verdict on the concurrence of the number of jurors specified by law, personally in writing or orally on the record waives the right to such a verdict.

9. Rule 26.01. Trial by Jury or by the Court

Amend Rule 26.01, subd. 3 as follows:

Subd. 3. Trial on Stipulated Facts. By agreement of the defendant and the prosecuting attorney, a case, including a determination of defendant's guilt, or the existence of facts to support an aggravated sentence, or both, may be submitted to and tried by the court based on stipulated facts. Before proceeding in this manner, the defendant shall acknowledge and waive the rights to testify at trial, to have the prosecution witnesses testify in open court in the defendant's presence, to question those prosecution witnesses, and to require any favorable witnesses to testify for the defense in court. The agreement and the waiver shall be in writing or orally on the record. If this procedure is utilized for determination of defendant's guilt and the existence of facts to support an aggravated sentence, there shall be a separate waiver as to each issue. Upon submission of the case on stipulated facts, the court shall proceed as on any other trial to the court. If the defendant is found guilty based on the stipulated facts, the defendant may appeal from the judgment of conviction and raise issues on appeal the same as from any trial to the court.

10. Rule 26.03. Procedures During Trial

Amend Rule 26.03, subd. 17(1) and (3) as follows:

Subd. 17. Motion for Judgment of Acquittal or Insufficiency of Evidence to Support an Aggravated Sentence.

(1) Motions Before Submission to Jury. Motions for directed verdict are abolished and motions for judgment of acquittal shall be used in their place. After the evidence on either side is closed, the court on motion of a defendant or on its initiative shall order the entry of a judgment of acquittal of one or more offenses charged in the tab charge, indictment or complaint if the evidence is insufficient to sustain a conviction of such offense or offenses. The court shall also, on motion of the defendant or on its initiative, order that any grounds for an aggravated sentence be withdrawn from consideration by the jury if the evidence is insufficient.

(2) Reservation of Decision on Motion. If the defendant's motion is made at the close of the evidence offered by the prosecution, the court may not reserve decision of the motion. If the defendant's motion is made at the close of all the evidence, the court may reserve decision on the motion, submit the case to the jury and decide the motion either before the jury returns a verdict or after it returns a verdict or is discharged without having returned a verdict. If the defendant's motion is granted after the jury returns a verdict of guilty, the court shall make written findings specifying its reasons for entering a judgment of acquittal.

(3) *Motion After Discharge of Jury.* If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal or insufficiency of evidence to support an aggravated sentence may be made or renewed within 15 days after the jury is discharged or within such further time as the court may fix during the 15-day period. If a verdict of guilty is returned the court may on such motion set aside the verdict and enter judgment of acquittal, in which case the court shall make written findings specifying its reasons for entering a judgment of acquittal. If no verdict is returned, the court may enter judgment of acquittal. Such a motion is not barred by defendant's failure to make a similar motion prior to the submission of the case to the jury.

11. Rule 26.03. Procedures During Trial

Amend Rule 26.03, subd. 18 as follows:

Subd. 18. Instructions.

(1) *Requests for Instructions.* At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. At the same time copies of such requests shall be furnished to all parties. The court shall inform counsel of its proposed action upon the requests prior to the arguments to the jury, and such action shall be made a part of the record.

(2) *Proposed Instructions.* The court may, and upon request of any party shall, before the arguments to the jury, inform counsel what instructions will be given and all such instructions may be stated to the jury by either party as a part of the party's argument.

(3) *Objections to Instructions.* No party may assign as error any portion of the charge or omission therefrom unless the party objects thereto before the jury retires to consider its verdict. The matter to which objection is made and the grounds of the objection shall be specifically stated. Opportunity shall be given to make the objection out of the hearing of the jury and, on request of any party, out of the presence of the jury. All objections to instructions and the rulings thereon shall be included in the record. All instructions, whether given or refused, shall be made a part of the record. An error in the instructions with respect to fundamental law or controlling principle may be assigned in a motion for a new trial though it was not otherwise called to the attention of the court.

(4) *Giving of Instructions.* The court in its discretion shall instruct the jury either before or after the arguments are completed except, at the discretion of the court, preliminary instructions need not be repeated. The instructions may be in writing and in the discretion of the court a copy may be taken to the jury room when the jury retires for deliberation.

(5) *Contents of Instructions.* In charging the jury the court shall state all matters of law which are necessary for the jury's information in rendering a verdict and shall inform the jury that it is the exclusive judge of all questions of fact. The court shall not

comment on the evidence or the credibility of the witnesses, but may state the respective claims of the parties.

(6) Verdict Forms. The court shall submit appropriate forms of verdict to the jury for its consideration. Where an aggravated sentence is sought, the court shall submit the issue(s) to the jury by special interrogatory.

(Note: Include comment referencing CRIMJIG 8.01.)

12. Rule 26.03. Procedures During Trial

Amend Rule 26.03, subd. 19 as follows:

Subd. 19. Jury Deliberations and Verdict.

(1) *Materials to Jury Room.* The court shall permit the jury, upon retiring for deliberation, to take to the jury room exhibits which have been received in evidence, or copies thereof, except depositions and may permit a copy of the instructions to be taken to the jury room.

(2) *Jury Requests to Review Evidence.*

1. If the jury, after retiring for deliberation, requests a review of certain testimony or other evidence, the jurors shall be conducted to the courtroom. The court, after notice to the prosecutor and defense counsel, may have the requested parts of the testimony read to the jury and permit the jury to re-examine the requested materials admitted into evidence.

2. The court need not submit evidence to the jury for review beyond that specifically requested by the jury, but in its discretion the court may also have the jury review other evidence relating to the same factual issue so as not to give undue prominence to the evidence requested.

(3) *Additional Instructions After Jury Retires.*

1. If the jury, after retiring for deliberation, desires to be informed on any point of law, the jurors, after notice to the prosecutor and defense counsel, shall be conducted to the courtroom. The court shall give appropriate additional instructions in response to the jury's request unless:

(a) the jury may be adequately informed by directing their attention to some portion of the original instructions;

(b) the request concerns matters not in evidence or questions which do not pertain to the law of the case;

or (c) the request would call upon the judge to express an opinion upon factual matters that the jury should determine.

2. The court need not give additional instructions beyond those specifically requested by the jury, but in its discretion the court may also give or repeat other instructions to avoid giving undue prominence to the requested instructions.

3. The court after notice to the prosecutor and defense counsel may recall the jury after it has retired and give any additional instructions as the court deems appropriate.

(4) *Deadlocked Jury.* The jury may be discharged without having agreed upon a verdict if it appears that there is no reasonable probability of agreement.

(5) *Polling the Jury.* When a verdict is rendered and before the jury has been discharged, the jury shall be polled at the request of any party or upon the court's initiative. The poll shall be conducted by the court or clerk of court who shall ask each juror individually whether the verdict announced is the juror's verdict. If the poll does not conform to the verdict, the jury may be directed to retire for further deliberation or may be discharged. When the jury has answered special interrogatories relating to an aggravated sentence, the jury shall be polled at the request of any party or upon the court's initiative as to their answers.

(6) *Impeachment of Verdict.* Affidavits of jurors shall not be received in evidence to impeach their verdict. A defendant who has reason to believe that the verdict is subject to impeachment, shall move the court for a summary hearing. If the motion is granted the jurors shall be interrogated under oath and their testimony recorded. The admissibility of evidence at the hearing shall be governed by Rule 606(b) of the Minnesota Rules of Evidence.

(7) *Partial Verdict.* The court may accept a partial verdict when the jury has agreed on a verdict on less than all of the charges submitted, but is unable to agree on the remainder.

13. Rule 26.04. Post-Verdict Motions

Amend Rule 26.04, subd. 1 as follows:

Subd. 1. New Trial.

(1) *Grounds.* The court on written motion of the defendant may grant a new trial on any of the following grounds:

1. If required in the interests of justice;
2. Irregularity in the proceedings of the court, jury, or on the part of the prosecution, or any order or abuse of discretion, whereby the defendant was deprived of a fair trial;
3. Misconduct of the jury or prosecution;
4. Accident or surprise which could not have been prevented by ordinary prudence;
5. Material evidence, newly discovered, which with reasonable diligence could not have been found and produced at the trial;
6. Errors of law occurring at the trial, and objected to at the time or, if no objection is required by these rules, assigned in the motion;
7. The verdict or finding of guilty is not justified by the evidence, or is contrary to law.

If a new trial is granted only on the issue of an aggravated sentence, it shall be limited to a trial on the facts in support of an aggravated sentence.

(2) *Basis of Motion.* A motion for new trial shall be made and heard on the files, exhibits and minutes of the court. Pertinent facts that would not be a part of the minutes may be shown by affidavit except as otherwise provided by these rules. A full or partial transcript of the court reporter's notes of the testimony taken at the trial or other verbatim recording thereof may be used on the hearing of the motion.

(3) *Time for Motion.* Notice of a motion for a new trial shall be served within 15 days after verdict or finding of guilty. The motion shall be heard within 30 days after the verdict or finding of guilty, unless the time for hearing be extended by the court within the 30-day period for good cause shown.

(4) *Time for Serving Affidavits.* When a motion for new trial is based on affidavits, they shall be served with the notice of motion. The opposing party shall have 10 days after such service in which to serve opposing affidavits, which period may be extended by the court upon an order extending the time for hearing under this rule. The court may permit reply affidavits.

14. Rule 27.03. Sentencing Proceedings

Subd. 1. Hearings. Hearings upon the presentence report and upon the sentence to be imposed upon the defendant shall be held as provided by law. Before the sentencing proceeding, in a misdemeanor or gross misdemeanor case, each party shall notify the opposing party and the court of any part of a written presentence report which the party intends to controvert by the production of evidence. Both the prosecutor and the defendant or defense counsel shall have an opportunity to controvert any part of an oral presentence report and for such purpose the court may continue the sentencing.

The procedure for such hearings in felony cases shall be as follows:

(A) At the time of, or within three days after a plea, finding or verdict of guilty of a felony, the court may order a presentence investigation and shall order that a sentencing worksheet be completed. As part of any presentence investigation and report, the court may order a mental or physical examination of the defendant. The court shall also then:

- (1) Set a date for the return of the report of the presentence investigation.
- (2) Set a date, time and place for the sentencing.
- (3) Order the defendant to return at such date, time and place.
- (4) If the facts ascertained at the time of a plea or through trial cause the judge to consider a mitigated departure from the sentencing guidelines appropriate, the court shall advise counsel of such consideration.