

# INSTRUCTIONS

## MOTION TO STAY STAGGERED SENTENCE

(AVOID JAIL TIME OR ELECTRONIC HOME MONITORING)

### Important Notices and Resources

The Court has forms and instructions, for some types of cases, as a general guide to the court process. These instructions explain the steps in more detail and answer common questions but are not a full guide to the law. Court employees may be able to give general information on court rules and procedures, but they cannot give legal advice.

#### Have questions about court forms or instructions?

- Call the 10th Judicial District Self-Help Center at (763) 760-6699
- Email [10CourtHelp@courts.state.mn.us](mailto:10CourtHelp@courts.state.mn.us)

#### Not sure what to do about a legal issue or need advice?

- Talk with a lawyer
- Visit [www.mncourts.gov/Help-Topics/Find-a-Lawyer.aspx](http://www.mncourts.gov/Help-Topics/Find-a-Lawyer.aspx)

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### Forms You May Need

- *Notice of Motion and Motion to Stay Staggered Sentence* (10CR-102)
- *Affidavit in Support of Motion to Stay Staggered Sentence* (10CR-103)
- *(2) Affidavit of Service* (10CR-104)

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Helpful materials may be found at your public county law library. For a directory, see <http://mn.gov/law-library/research-links/county-law-libraries.jsp>. For more information, contact Court Administration or call the Minnesota State Law Library at 651-297-7651.

## General Information about Requesting to Stay a Staggered Sentence (Avoid Jail Time or Electric Home Monitoring/EHM)

The information contained in this document is a general guide. It explains the legal process to request your sentencing judge to stay the next phase of your jail time or electronic home monitoring (EHM). You are asking to avoid jail time or EHM at this time. You need to bring this motion at least thirty days before the date you were ordered to serve your sentence or start on EHM. This is not legal advice. If you do not understand any of these procedures, talk to a lawyer. Court staff, including Self-Help staff, cannot give legal advice.

### Steps to Take

1. Complete the court forms, following all of the steps in these instructions.
2. Schedule a hearing date by contacting Court Administration in the county where the case was filed.
3. File the forms with Court Administration (electronically, by mail, or at the courthouse).
4. Serve the forms and any attachments on the Prosecutor and Corrections/Probation.
5. Appear at the hearing. Each step here is described below in more detail.

You may be able to use this packet IF you were sentenced to a “staggered” sentence. A “staggered” sentence includes specific separate blocks of time to be served either in jail or on EHM AND you want your sentencing judge to review and stay your sentence before the start of the next phase of jail time or EHM. Again, a stay means you do not have to serve the jail time or start on EHM.

An example of a staggered sentence is: 360 days executed with:

- 1/3 of sentence served immediately
- 1/3 of sentence is served at the end of the 1<sup>st</sup> year of probation
- 1/3 of sentence is served at the end of the 2<sup>nd</sup> year of probation

### What information does your motion need to contain?

Your affidavit must be detailed. You should include facts in your affidavit, not conclusions. An example of a fact is “I attend AA/NA support groups 3 times a week on Monday, Wednesday, and Friday.” An example of a conclusion is “I participate in AA/NA.” By stating specific facts detailing your actions and the changes you have made to your life, you will help the judge decide if the next phase of jail or EHM should be stayed.

**IMPORTANT:** It is strongly recommended that you get legal advice. If you do not know what you should write in your forms, or want the forms reviewed by an attorney, seek legal advice.

## Step 1: Gather Important Information and Get a Hearing Date

### 1. Gather Important Information.

You are going to need the following information:

- Your court file number (also known as a case number); and
- Name and address of the Prosecutor. You may be able to locate the name of the Prosecutor by reviewing the Case Details (Register of Actions) page. You can access your case details at the courthouse and online.

To find your case details online, go to <https://www.mncourts.gov/Access-Case-Records.aspx>. Click on "Minnesota District (Trial) Court Case Search." Follow the directions to search for your case by name or case number.

**2. Contact Court Administration and Obtain a Hearing Date.** Contact Court Administration to schedule a hearing for your motion. If you do not schedule a hearing, the court will not do anything with your motion. You may contact Court Administration at the following phone numbers:

Anoka	(763) 760-6575	Pine	(320) 591-1500
Chisago	(651) 213-7010	Sherburne	(763) 284-7140
Isanti	(763) 290-7020	Washington	(651) 413-8133
Kanabec	(320) 679-6400	Wright	(763) 682-7548

You can find the contact information for Court Administration at:

<https://www.mncourts.gov/Find-Courts.aspx>.

Your hearing should be at least thirty days before the date you were ordered to report to serve your sentence or start on EHM.

**NOTE:** Your hearing may be cancelled if you have not filed your completed documents at least twenty-one days before the hearing date. You will write the hearing date on the *Notice of Motion and Motion to Stay Staggered Sentence* (See Step 2 below).

## Step 2:

### Fill Out Notice of Motion and Motion to Stay Staggered Sentence (10CR-102)

#### THE CAPTION

The top part of the first page is where you will find the case caption. It looks like this:

<b>State of Minnesota</b>	<b>District Court</b>				
<table border="1" style="width: 100%; border-collapse: collapse;"><tr><td style="width: 50%; padding: 5px;">County of: _____</td><td style="width: 50%; padding: 5px;">Court File Number: _____</td></tr><tr><td style="width: 50%; padding: 5px;">Judicial District: _____ Tenth</td><td style="width: 50%; padding: 5px;">Case Type: _____</td></tr></table>		County of: _____	Court File Number: _____	Judicial District: _____ Tenth	Case Type: _____
County of: _____	Court File Number: _____				
Judicial District: _____ Tenth	Case Type: _____				
State of Minnesota					
vs.					
_____ Defendant (Your name)					
<b>Notice of Motion and Motion to Stay Staggered Sentence</b>					

At the top of the page, write in the following information:

- The **county** where the case is located
- The “Tenth” **judicial district**
- Your **court file number** (this usually starts with a two-digit number, followed by letters and numbers. For example, *91-CR-17-0001*)
- The **case type** is “Criminal”
- Your name on the line for “Defendant”

#### THE NOTICE OF MOTION AND MOTION

Write in the name and address for the Prosecutor and Corrections/Probation Department. Fill in the hearing information that you received from Court Administration (judge, date, time, and location).

#### THE MOTION

The **motion** is where you state **what** you want the court to order. Part of the motion has already been filled out for you. You should read it and mark the type of sentence you would like stayed. You will check the box for either executed jail time or electric home monitoring. If you would like to add additional information, please do so.

#### THE SIGNATURE BLOCK

Date and sign the *Motion*. Write the name of the county and state you were in when you sign it. Print your personal contact information below your signature.

## **Step 3:**

### **Fill Out Affidavit in Support of Motion to Stay Staggered Sentence (10CR-103)**

#### **THE CAPTION**

Fill in the top part of the form (case caption) the same way you did on the *Notice of Motion and Motion to Stay Staggered Sentence*.

#### **THE AFFIDAVIT**

The **Affidavit** tells the court and the other party **why** you are asking to stay your sentence. If your *Affidavit* does not include the required information, or detailed enough information, your paperwork may be rejected by the court and you will have to start over.

**NOTE:** The instructions that follow are numbered the same as the questions on the *Affidavit in Support of Motion to Stay Staggered Sentence* form.

Write your name in the blank line after “**My name is**” to identify that you are the person writing the affidavit.

1. **Sobriety.** Check box “1” to tell the court about your sobriety. Write down the length of time you have been sober in the blank line and check the boxes for years and months.
2. **Terms of Probation.** Check box “2” if you are in good standing with and following the terms of your probation.
3. **Contact with Probation Officer.** Check box “3” if you have contacted probation regarding your request. Write in your probation officer’s name or check the box to indicate that you do not have an assigned probation officer.
4. **Steps to Stay Sober.** Tell the court what steps you have taken to become and remain sober.
5. **Chemical Free Lifestyle.** Tell the court how being chemically free has changed your life. Here, you may want to include information about groups, organizations, and people that have helped you remain chemically free.
6. **Other.** If you are including anything other than what you have written in your *Affidavit*, check the “Other” box or boxes and write what else you are including to support your request. For example, you may want to include letters from AA sponsors, counselors, family, a significant other, clergy, employers/co-workers, and friends.

#### **THE SIGNATURE BLOCK**

When you sign your *Affidavit in Support of Motion to Stay Staggered Sentence*, you are signing under penalty of perjury. Perjury is the crime of intentionally lying or misrepresenting the truth. By signing under penalty of perjury, you are stating that the information in your *Affidavit* is true.

Date and sign the *Affidavit*. Write the name of the county and state you were in when you sign it. Print your personal contact information below your signature.

## **Step 4:**

### **Make and Serve Copies**

Make three copies of your paperwork (*Notice of Motion and Motion to Stay Staggered Sentence*, *Affidavit in Support of Motion to Stay Staggered Sentence*, and any attachments you may have) for the (1) Prosecutor, (2) Corrections/Probation, and (3) yourself. Be sure to have your copy with you at your hearing.

- Service may be done by you or another adult. Another adult could be a neighbor, friend, relative, significant other, a process server company, the Sheriff's Office, etc.
- Paperwork must be served personally (hand-delivered) at least 21 days before the hearing or mailed (by first-class mail) to the addresses of the Prosecutor and Corrections/Probation at least 24 days before the hearing.
- Papers **cannot** be served on a legal holiday

**NOTE:** Generally, you do not need to serve anyone other than the Prosecutor and Corrections/Probation. If you have questions about service to a party with a protection, harassment, or no contact order currently in place, please get legal advice.

## **Step 5:**

### **Fill Out Affidavit of Service (10CR-104)**

**After** the paperwork is served on the Prosecutor and Corrections/Probation office (**not before**), the person who served it must fill out two *Affidavit of Service* forms. These forms are proof to the court that your paperwork was served on the Prosecutor and Corrections/Probation office.

For more information about the *Affidavit of Service*, see the "Service of Process" Help Topic online at <http://www.mncourts.gov/Help-Topics/Service-of-Process.aspx>.

## **Step 6:**

### **File with Court Administration**

You will need to file the following forms with Court Administration:

- *Notice of Motion and Motion to Stay Staggered Sentence* (10CR-102)
- *Affidavit in Support of Motion to Stay Staggered Sentence* (10CR-103)
- Attached documents (if any) in support of motion
- (2) *Affidavit of Service* (10CR-104)

**NOTE:** Your hearing may be cancelled if you have not filed your completed paperwork at least twenty-one days before the hearing date.

## **Step 7:** **Go To Your Hearing**

To prepare for your hearing, look at the court rules. There is a Court Rules Help Topic at <http://www.mncourts.gov/SupremeCourt/Court-Rules.aspx> or you can visit a law library. **You are expected to know and follow the court rules of procedure.**

You must go to court on the date set for the hearing. **It is important to be on time.** If you are even a few minutes late, the judge may dismiss your motion.

If your hearing is **remote** via ZOOM, you can find additional helpful materials on the Remote Hearing Information Help Topic webpage at <https://mncourts.gov/Remote-Hearings.aspx>.

Bring your copies of the paperwork with you to the hearing. If the Prosecutor has served you with a responsive motion, be prepared to respond to their motion at the hearing. If you are unsure how to prepare for the hearing, or what evidence you should bring, you should review the Court Find a Lawyer Help Topic at <https://mncourts.gov/Help-Topics/Find-a-Lawyer.aspx> before your court date.

County of: _____	Court File Number: _____
Judicial District: _____ Tenth	Case Type: _____

State of Minnesota

vs.

\_\_\_\_\_  
Defendant (Your name)

**Notice of Motion and Motion to Stay Staggered Sentence**

TO (name and address of Prosecutor): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TO (name and address of Corrections/Probation): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NOTICE OF MOTION AND MOTION**

**Notice to Prosecutor:** I move the sentencing Court for a review hearing to stay the pending executed jail time and/or electronic home monitoring. I request that this hearing be set in front of my sentencing judge, the Honorable \_\_\_\_\_ on \_\_\_\_\_ (date) at \_\_\_\_\_ (time); at \_\_\_\_\_ (location).

**MOTION**

I request that my  executed jail time or  electronic home monitoring should be stayed (avoided). I have been alcohol and controlled substance free. I have complied with all terms and conditions of my probation. Therefore, my jail time and/or electronic home monitoring should be stayed, and I should not have to report to serve my jail time or get connected with electronic home monitoring.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_



County of: _____	Court File Number: _____
Judicial District: _____ Tenth _____	Case Type: _____

State of Minnesota

vs.

\_\_\_\_\_  
Defendant (Your name)

**Affidavit in Support of Motion to Stay Staggered Sentence**

My name is \_\_\_\_\_. I understand that my sentencing judge will not consider my request until my sentencing judge has been provided with a written recommendation from my probation officer or my probation officer has personally spoken to my sentencing judge either by the hearing date or at the time of the hearing.

This affidavit supports my Notice of Motion and Motion to Stay Staggered Sentence. I state that:

1.  I am sober. I have been sober for \_\_\_\_ years and \_\_\_\_ months.
2.  I am in good standing with the terms and conditions of my probation.
3.  I have contacted probation about my motion. My probation officer's name is \_\_\_\_\_  
\_\_\_\_\_ or  I do not have an assigned probation officer.
4. These are the steps I take to remain sober:

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5. This is how being chemically free has changed my life: (It is important to include information about groups, organizations, and people that have helped you remain chemically free.)

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6. I have attached the following documents or affidavits in support of my request:

- Other: \_\_\_\_\_
- Other: \_\_\_\_\_
- Other: \_\_\_\_\_

I declare under penalty of perjury that everything I have stated in this document is true and correct. Minn. Stat. § 358.116

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

County and state where signed:  
\_\_\_\_\_

Printed Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

County of: _____	Court File Number: _____
Judicial District: _____ Tenth _____	Case Type: _____

State of Minnesota

vs.

\_\_\_\_\_  
Defendant (Your name)

**Affidavit of Service**

I, \_\_\_\_\_ (name of person who hand-delivered or mailed documents), state that I am at least 18 years of age, having been born on \_\_\_\_\_ (date of birth), and that on \_\_\_\_\_ (date of service)

I served the following documents:

- Notice of Motion and Motion to Stay Staggered Sentence
- Affidavit in Support of Motion to Stay Staggered Sentence
- Other: \_\_\_\_\_

upon (check one):  Prosecutor  Corrections/Probation

Service was done by:

Personal Service: By handing a true and correct copy of the documents to \_\_\_\_\_

Mail Service: By mailing a true and correct copy of the documents by first class mail to \_\_\_\_\_ (Prosecutor) at their address at: \_\_\_\_\_

(street address, city, state, zip code) and depositing the envelope, with sufficient postage, in the U.S. Mail at a postal box located in the City of \_\_\_\_\_, State of \_\_\_\_\_.

I declare under penalty of perjury that everything I have stated in this document is true and correct. Minn. Stat. § 358.116

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

County and state where signed: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

County of: _____	Court File Number: _____
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Defendant (Your name)

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I served the following documents:

- Notice of Motion and Motion to Stay Staggered Sentence
- Affidavit in Support of Motion to Stay Staggered Sentence
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upon (check one):  Prosecutor  Corrections/Probation

Service was done by:

Personal Service: By handing a true and correct copy of the documents to \_\_\_\_\_

Mail Service: By mailing a true and correct copy of the documents by first class mail to \_\_\_\_\_ (Corrections/Probation) at their

address at: \_\_\_\_\_

\_\_\_\_\_ (street address, city, state, zip code) and depositing the envelope, with sufficient postage, in the U.S. Mail at a postal box located in the City of \_\_\_\_\_, State of \_\_\_\_\_.

I declare under penalty of perjury that everything I have stated in this document is true and correct. Minn. Stat. § 358.116

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

County and state where signed: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_