

statement and to present any information in mitigation of punishment or reason why the defendant should not be sentenced. If the defendant wishes to make a statement, the court shall afford the defendant a reasonable opportunity to do so. For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, the requirement that the court address the defendant personally may be satisfied by the use of two-way electronic audio-video communication. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201.

(4) (a) The court shall permit the victim to present a statement concerning the effects of the crime on the victim, the circumstances surrounding the crime, the manner in which the crime was perpetrated, and the victim's opinion regarding appropriate sentence. At the victim's option, the victim may present the statement in writing before the sentencing hearing or orally under oath at the sentencing hearing, or both.

(b) The court shall give copies of any written statements of the victim to the prosecutor and the defendant prior to imposing sentence.

(c) The court shall consider the victim's statement along with other factors. However, if the victim's statement includes new material facts upon which the court intends to rely, the court shall allow the defendant adequate opportunity to respond and may continue the sentencing hearing if necessary.

(5) The court shall impose sentence or make any other disposition authorized by law.

(6) In felony cases, the court shall specifically state all reasons for the sentence, including restrictions, conditions, or enhancements imposed, in open court on the record and in the written judgment.

History: En. Sec. 221, Ch. 800, L. 1991; amd. Sec. 9, Ch. 125, L. 1995; amd. Sec. 5, Ch. 163, L. 1997; amd. Sec. 3, Ch. 524, L. 2001.

46-18-116. Judgment — conflict between written judgment and oral pronouncement — correction of factually erroneous sentence or judgment. (1) The judgment must set forth the plea, the verdict or finding, and the adjudication. If the defendant is convicted, it must set forth the sentence or other disposition. The written judgment must be signed and must be entered on the record within 30 days after the oral pronouncement of the disposition of the case. At the time that the judgment is filed, the prosecutor of the county in which the sentence was imposed shall serve a copy of the judgment on the defendant. The written judgment must include a statement of the rights set forth in subsection (2).

(2) If a written judgment and an oral pronouncement of sentence or other disposition conflict, the defendant or the prosecutor in the county in which the sentence was imposed may, within 120 days after filing of the written judgment, request that the court modify the written judgment to conform to the oral pronouncement. The court shall modify the written judgment to conform to the oral pronouncement at a hearing, and the defendant must be present at the hearing unless the defendant waives the right to be present or elects to proceed pursuant to 46-18-115. The defendant and the prosecutor waive the right to request modification of the written judgment if a request for modification of the written judgment is not filed within 120 days after the filing of the written judgment in the sentencing court.

(3) The court may correct a factually erroneous sentence or judgment at any time. Illegal sentences must be addressed in the manner provided by law for appeal and postconviction relief.

History: En. Sec. 222, Ch. 800, L. 1991; amd. Sec. 1, Ch. 74, L. 2001; amd. Sec. 1, Ch. 141, L. 2003.

Compiler's Comments

2003 Amendment: Chapter 141 in (1) at beginning of third sentence substituted "written judgment" for "judgment" and at end inserted "within 30 days after the oral pronouncement of the disposition of the case", and made minor changes in style. Amendment effective October 1, 2003.

46-18-117. Repealed. Sec. 2, Ch. 74, L. 2001.

History: En. Sec. 223, Ch. 800, L. 1991; amd. Sec. 42, Ch. 262, L. 1993.

46-18-118 through 46-18-129 reserved.

46-18-130. Terminated. Sec. 5, Ch. 306, L. 1995.

History: En. Sec. 1, Ch. 306, L. 1995.

46-18-131. Terminated. Sec. 5, Ch. 306, L. 1995.

History: En. Sec. 2, Ch. 306, L. 1995.



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