

SAC Rules of Criminal Procedure

Recommended Changes to Mass. R. Crim. P. 12(b)(5)(A), 12(c)(4), and the caption of Rule 12(c)

[Current Mass. R. Crim. P. 12(b)(5)(A) and 12(c)(4)]

Rule 12. Pleas and plea agreements

...

(b) Plea discussions; pleas without plea agreement and with plea agreement

...

(5) Pleas conditioned upon an agreement. The defendant may enter into a plea agreement with the prosecutor if the defendant intends to plead guilty or admit to sufficient facts but not if the defendant intends to plead nolo contendere.

(A) A plea agreement may specify both that the parties agree on a specific sentence, including the length of any term of probation, and that the prosecutor will make one or more of the following charge concessions: amend an indictment or complaint; dismiss, reduce, or partially dismiss charges; not seek an indictment; or not bring other charges. The judge shall follow the procedures set forth in Rule 12(d) when the parties enter into a plea agreement that includes both an agreement to a specific sentence and a charge concession. If the judge accepts the plea agreement and the defendant's plea, Rule 12(d) requires the judge to sentence the defendant according to the terms of the plea agreement.

(B) When the plea is conditioned on a plea agreement other than one described in Rule 12(b)(5)(A), the judge shall follow the procedures set forth in Rule 12(c).

...

(c) Procedure if no plea agreement or if plea agreement does not include both a specific sentence and a charge concession.

....

(4) Disposition requests.

(A) When there is no agreed-upon recommendation as to sentence. The judge shall give both parties the opportunity to recommend a sentence to the judge. In the District Court, the judge shall inform the defendant that the disposition imposed will not exceed the terms of the defendant's request without first giving the defendant the right to withdraw the plea. In the Superior Court, the judge shall inform the defendant that the disposition imposed will not exceed the terms of the prosecutor's recommendation without first giving the defendant the right to withdraw the plea. At any time prior to accepting the plea or admission, the judge may continue the hearing on the judge's own motion to ensure that the judge has been provided with, and has had an opportunity to consider, all of the facts pertinent to a determination of a just disposition in the case.

(B) Where there is an agreed-upon recommendation as to disposition. The judge shall inform the defendant that the sentence imposed will not exceed the terms of the agreement without first giving the defendant the right to withdraw the plea. At any time prior to accepting the plea or admission, the judge may continue the hearing on the judge's own motion to ensure that the judge has been provided with, and has had an opportunity to consider, all of the facts pertinent to a determination of a just disposition in the case.

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[Proposed amendment to Mass. R. Crim. P. 12(b)(5), 12(c)(4), and the caption of Rule 12(c) - redline version]

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(A) A plea agreement may specify both that the parties agree on a specific ~~senteneedisposition~~, including the length of any term of probation, and that the prosecutor will make one or more of the following charge concessions: amend an indictment or complaint; dismiss, reduce, or partially dismiss charges; not seek an indictment; or not bring other charges. The judge shall follow the procedures set forth in Rule 12(d) when the parties enter into a plea agreement that includes both an agreement to a specific ~~senteneedisposition~~ and a charge concession. If the judge accepts the plea agreement and the defendant's plea, Rule 12(d) requires the judge to sentence the defendant according to the terms of the plea agreement.

(B) When the plea is conditioned on a plea agreement other than one described in Rule 12(b)(5)(A), the judge shall follow the procedures set forth in Rule 12(c).

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(c) Procedure if no plea agreement or if plea agreement does not include both a specific ~~sentenced~~disposition and a charge concession.

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(4) Disposition requests.

(A) When there is no agreed-upon recommendation as to ~~sentenced~~disposition. The judge shall give both parties the opportunity to recommend a ~~sentenced~~disposition to the judge. In the District Court, the judge shall inform the defendant that the disposition imposed will not exceed the terms of the defendant's request without first giving the defendant the right to withdraw the plea. In the Superior Court, the judge shall inform the defendant that the disposition imposed will not exceed the terms of the prosecutor's recommendation without first giving the defendant the right to withdraw the plea. At any time prior to accepting the plea or admission, the judge may continue the hearing on the judge's own motion to ensure that the judge has been provided with, and has had an opportunity to consider, all of the facts pertinent to a determination of a just disposition in the case.

(B) Where there is an agreed-upon recommendation as to disposition. The judge shall inform the defendant that the ~~sentenced~~disposition imposed will not exceed the terms of the agreement without first giving the defendant the right to withdraw the plea. At any time prior to accepting the plea or admission, the judge may continue the hearing on the judge's own motion to ensure that the judge has been provided with, and has had an opportunity to consider, all of the facts pertinent to a determination of a just disposition in the case.

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[Proposed amendment to Mass. R. Crim. P. 12(b)(5), 12(c)(4), and the caption of Rule 12(c) - clean version]

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(A) A plea agreement may specify both that the parties agree on a specific disposition, including the length of any term of probation, and that the prosecutor will make one or more of the following charge concessions: amend an indictment or complaint; dismiss, reduce, or partially dismiss charges; not seek an indictment; or not bring other charges. The judge shall follow the procedures set forth in Rule 12(d) when the parties enter into a plea agreement that includes both an agreement to a specific disposition and a charge concession. If the judge accepts the plea agreement and the defendant's plea, Rule 12(d) requires the judge to sentence the defendant according to the terms of the plea agreement.

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SAC Rules of Criminal Procedure

Recommended Changes to Mass. R. Crim. P. 16(a)

[Current Mass. R. Crim. P. 16(a)]

Rule 16. Dismissal by the Prosecution

(a) Entry of a nolle prosequi. A prosecuting attorney may enter a nolle prosequi of pending charges at any time prior to the pronouncement of sentence. A nolle prosequi shall be accompanied by a written statement, signed by the prosecuting attorney, setting forth the reasons for that disposition.

...

[Proposed amendment to Mass. R. Crim. P. 16(a) redline version]

Rule 16. Dismissal by the Prosecution

(a) Entry of a nolle prosequi. A prosecuting attorney may enter a nolle prosequi of pending charges at any time prior to the pronouncement of sentence ~~or the imposition of probation or a continuance without a finding~~. A nolle prosequi shall be accompanied by a written statement, signed by the prosecuting attorney, setting forth the reasons for that disposition.

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[Proposed amendment to Mass. R. Crim. P. 16(a) clean version]

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(a) Entry of a nolle prosequi. A prosecuting attorney may enter a nolle prosequi of pending charges at any time prior to the pronouncement of sentence or the imposition of probation or a continuance without a finding. A nolle prosequi shall be accompanied by a written statement, signed by the prosecuting attorney, setting forth the reasons for that disposition.

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SAC Rules of Criminal Procedure

Recommended Changes to Mass. R. Crim. P. 18(a)

[Current Mass. R. Crim. P. 18(a)]

Rule 18. Presence of defendant

(a) Presence of defendant. In any prosecution for crime the defendant shall be entitled to be present at all critical stages of the proceedings.

(1) Defendant absents himself. If a defendant is present at the beginning of a trial and thereafter absents himself without cause or without leave of court, the trial may proceed to a conclusion in all respects except the imposition of sentence as though the defendant were still present.

(2) Waiver of presence in misdemeanor cases. A person prosecuted for a misdemeanor may at his own request, with leave of court, be excused from attendance if represented by counsel or an agent authorized by law and may be excused from attendance without leave of court if so authorized by the General Laws.

(3) Presence not required. A defendant need not be present at a revision or revocation of sentence pursuant to rule 29 or at any proceeding where evidence is not to be taken.

...

[Proposed amendment to Mass. R. Crim. P. Rule 18(a) redline version]

Rule 18. Presence of defendant

(a) Presence of defendant. In any prosecution for crime the defendant shall be entitled to be present at all critical stages of the proceedings.

(1) Defendant absents himself. If a defendant ~~is~~ present at the beginning of a trial ~~and~~ thereafter ~~is~~ absents ~~himself~~ without cause or without leave of court, the trial may proceed to a conclusion in all respects except the imposition of sentence ~~or probation~~ as though the defendant were still present.

(2) Waiver of presence in misdemeanor cases. A person prosecuted for a misdemeanor may ~~at his own~~ upon request, with leave of court, be excused from attendance if represented by counsel or an agent authorized by law and may be excused from attendance without leave of court if so authorized by the General Laws.

(3) Presence not required. A defendant need not be present at a revision or revocation of ~~sentene~~disposition pursuant to rule 29 or at any proceeding where evidence is not to be taken.

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[Proposed amendment to Mass. R. Crim. P. Rule 18(a) clean version]

Rule 18. Presence of defendant

(a) Presence of defendant. In any prosecution for crime the defendant shall be entitled to be present at all critical stages of the proceedings.

(1) Defendant absenting self. If a defendant present at the beginning of a trial thereafter is absent without cause or without leave of court, the trial may proceed to a conclusion in all respects except the imposition of sentence or probation as though the defendant were still present.

(2) Waiver of presence in misdemeanor cases. A person prosecuted for a misdemeanor may upon request, with leave of court, be excused from attendance if represented by counsel or an agent authorized by law and may be excused from attendance without leave of court if so authorized by the General Laws.

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SAC Rules of Criminal Procedure

Recommended Changes to Mass. R. Crim. P. 28

[Current Mass. R. Crim. P. 28]

Rule 28. Judgment

(a) Judgment. If the defendant has been determined to be guilty, a verdict or finding of guilty shall be rendered, or if he has been determined to be not guilty, a verdict or finding of not guilty shall be rendered, in open court, and shall be entered on the court's docket.

(b) Imposition of Sentence. After a verdict, finding, or plea of guilty, or a plea of nolo contendere, or an admission to sufficient facts, the defendant shall have the right to be sentenced without unreasonable delay. Pending sentence the court may commit the defendant or continue or alter the bail as provided by law. Before imposing sentence the court shall afford the defendant or his counsel an opportunity to speak on behalf of the defendant and to present any information in the mitigation of punishment.

(c) Notification of right to appeal. After a judgment of guilty is entered, the court shall advise the defendant of his right to appeal. In the District Court, upon the request of the defendant, the clerk of the court shall prepare and file forthwith a notice of appeal.

(d) Presentence investigation

(1) Criminal record. The probation officer shall inquire into the nature of every criminal case or juvenile complaint brought before the court and report to the court information concerning all prior criminal prosecutions or juvenile complaints, if any, and the disposition of each such prosecution, except where the defendant was found not guilty. Such information is to be presented before a defendant is admitted to bail in court, and also before disposition of the case against him.

(2) Report. The report of the presentence investigation shall contain any prior criminal or juvenile prosecution record of the defendant, but shall not contain any information relating to criminal or juvenile prosecutions in which the defendant was found not guilty. In addition, the report shall include such other available information as may be helpful to the court in the disposition of the case.

(3) Availability to parties. Prior to the disposition the presentence report shall be made available to the prosecutor and counsel for the defendant for inspection. In extraordinary cases, the judge may except from disclosure parts of the report which are not relevant to a proper sentence, diagnostic opinion which might seriously disrupt a program of rehabilitation, sources of information obtained upon a promise of confidentiality, or any other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other persons. If the

report is not made fully available, the portions thereof which are not disclosed shall not be relied upon in determining sentence. No party may make any copy of the presentence report.

(e) Filing. The court may file a case after a guilty verdict or finding without imposing a sentence if the defendant and the Commonwealth both consent. With the consent of both parties, the judge may specify a time limit beyond which the case may not be removed from the file, and may specify any events that may cause the case to be removed from the file. The defendant shall file a written consent with the court as to both the filing of the case and any time limit or events regarding removal from the file. Prior to accepting the defendant's consent, the court shall inform the defendant on the record in open court:

(i) that the defendant has a right to request sentencing on any or all filed case(s) at any time;

(ii) that subject to any time limit imposed by the court, the prosecutor may request that the case be removed from the file and sentence imposed if a related conviction or sentence is reversed or vacated or upon the prosecutor's establishing by a preponderance of the evidence either that the defendant committed a new criminal offense or that an event occurred on which the continued filing of the case was expressly made contingent by the court; and

(iii) that if the case is removed from the file the defendant may be sentenced on the case.

In sentencing the defendant after the removal of a case from the file, the court shall consider the over-all scheme of punishment employed by the original sentencing judge.

[Proposed amendment to Mass. R. Crim. P. Rule 28 redline version]

Rule 28. Judgment

(a) Judgment. If the defendant has been determined to be guilty, a verdict or finding of guilty shall be rendered, or if ~~he~~**the defendant** has been determined to be not guilty, a verdict or finding of not guilty shall be rendered, in open court, and shall be entered on the court's docket.

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[Proposed amendment to Mass. R. Crim. P. Rule 28 clean version]

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(ii) that subject to any time limit imposed by the court, the prosecutor may request that the case be removed from the file and a disposition imposed if a related conviction or sentence is reversed or vacated or upon the prosecutor's establishing by a preponderance of the evidence either that the defendant committed a new criminal offense or that an event occurred on which the continued filing of the case was expressly made contingent by the court; and

(iii) that if the case is removed from the file the defendant may be sentenced on the case.

In sentencing the defendant after the removal of a case from the file, the court shall consider the over-all scheme of punishment employed by the original sentencing judge.

SAC Rules of Criminal Procedure

Recommended Changes to Mass. R. Crim. P. 29(a)

[Current Mass. R. Crim. P. 29(a)]

Revision or revocation of sentence

(a) Revision or Revocation.

(1) *Illegal Sentences*. The trial judge, upon the judge's own motion, or the written motion of the prosecutor, filed within sixty days after imposition of a sentence, may revise or revoke such sentence if the judge determines that any part of the sentence was illegal.

(2) *Unjust Sentences*. The trial judge, upon the judge's own motion, or the written motion of a defendant, filed within sixty days after the imposition of a sentence or within sixty days after issuance of a rescript by an appellate court on direct review, may, upon such terms and conditions as the judge shall order, revise or revoke such sentence if it appears that justice may not have been done.

...

[Proposed amendment to Mass. R. Crim. P. 29(a) redline version]

Revision or revocation of sentence

(a) Revision or Revocation.

(1) *Illegal ~~Sentences~~Dispositions*. The trial judge, upon the judge's own motion, or the written motion of the prosecutor, filed within sixty days ~~after imposition~~ of a ~~sentencedisposition~~, may revise or revoke such ~~senteneedisposition~~ if the judge determines that any part of the ~~senteneedisposition~~ was illegal.

(2) *Unjust ~~Sentences~~Dispositions*. The trial judge, upon the judge's own motion, or the written motion of a defendant, filed within sixty days ~~after the imposition~~ of a ~~senteneedisposition~~, ~~or~~ within sixty days ~~afterof~~ issuance of a rescript by an appellate court on direct review, ~~or within sixty days of the disposition of criminal charges against a codefendant~~ may, upon such terms and conditions as the judge shall order, revise or revoke such sentence if it appears that justice may not have been done.

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[Proposed amendment to Mass. R. Crim. P. 29(a) clean version]

(a) Revision or Revocation.

(1) *Illegal Dispositions.* The trial judge, upon the judge's own motion, or the written motion of the prosecutor, filed within sixty days of a disposition, may revise or revoke such disposition if the judge determines that any part of the disposition was illegal.

(2) *Unjust Dispositions.* The trial judge, upon the judge's own motion, or the written motion of a defendant, filed within sixty days of a disposition, within sixty days of issuance of a rescript by an appellate court on direct review, or within sixty days of the disposition of criminal charges against a codefendant may, upon such terms and conditions as the judge shall order, revise or revoke such disposition if it appears that justice may not have been done.

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SAC Rules of Criminal Procedure

Recommended Changes to Mass. R. Crim. P. 31(d)

[Current Mass. R. Crim. P. 31(d)]

Rule 31. Stay of execution; relief pending review; automatic expiration of stay

...

(d) Probation or Suspended Sentence. An order placing a defendant on probation or suspending a sentence may be stayed if an appeal is taken.

[Proposed amendment to Mass. R. Crim. P. Rule 31(d) redline version]

Rule 31. Stay of execution; relief pending review; automatic expiration of stay

...

(d) ~~Probation or Suspended Sentence. An order placing a defendant on probation or suspending a sentence may be stayed if an appeal is taken.~~ Disposition other than imprisonment or fine. A judge in the exercise of discretion may stay an order imposing a disposition other than immediate imprisonment or a fine if an appeal is taken.

[Proposed amendment to Mass. R. Crim. P. Rule 31(d) clean version]

Rule 31. Stay of execution; relief pending review; automatic expiration of stay

...

(d) Disposition other than imprisonment or fine. A judge in the exercise of discretion may stay an order imposing a disposition other than immediate imprisonment or a fine if an appeal is taken.

SAC Rules of Criminal Procedure

Recommended Changes to Mass. R. Crim. P. 37(a) caption

[Current Mass. R. Crim. P. 37(a)]

Rule 37. Transfer of cases

(a) Transfer for plea and sentence

(1) District Court. A defendant against whom a complaint is pending and who appears in District Court, whether under arrest or pursuant to a summons, and against whom a complaint is pending in a division other than that in which he appears, may state in writing that he wishes to plead guilty or nolo contendere, to waive trial in the division in which the other complaint is pending, and to consent to disposition of the case in the division in which he appears. The District Court in which the defendant appears may order that the other complaint be transferred for disposition, subject to the written approval of the prosecutor in each division.

(2) Superior Court. A defendant against whom a complaint or indictment is pending and who appears in Superior Court, whether under arrest or pursuant to a summons, and against whom a complaint or indictment is pending in a county other than that in which he appears, may state in writing that he wishes to plead guilty or nolo contendere, to waive trial in the county in which the other complaint or indictment is pending, and to consent to disposition of the case in the county in which he appears. The Superior Court in which the defendant appears may order that the other complaint or indictment be transferred for disposition, subject to the written approval of the prosecuting attorney in each county.

(3) Effect of not guilty plea. If after a proceeding has been transferred pursuant to subdivision (a) of this rule the defendant pleads not guilty, the clerk shall return the papers transmitted pursuant to subdivision (c) of this rule to the court in which the prosecution was commenced, and the proceeding shall be restored to the docket of that court.

...

[Proposed amendment to Mass. R. Crim. P. Rule 37(a) redline version]

Rule 37. Transfer of cases

(a) Transfer for plea and ~~sentence~~disposition

(1) District Court. A defendant against whom a complaint is pending and who appears in District Court, whether under arrest or pursuant to a summons, and against whom a complaint is pending in a division other than that in which he appears, may state in writing that he wishes to

plead guilty or nolo contendere, to waive trial in the division in which the other complaint is pending, and to consent to disposition of the case in the division in which he appears. The District Court in which the defendant appears may order that the other complaint be transferred for disposition, subject to the written approval of the prosecutor in each division.

(2) Superior Court. A defendant against whom a complaint or indictment is pending and who appears in Superior Court, whether under arrest or pursuant to a summons, and against whom a complaint or indictment is pending in a county other than that in which he appears, may state in writing that he wishes to plead guilty or nolo contendere, to waive trial in the county in which the other complaint or indictment is pending, and to consent to disposition of the case in the county in which he appears. The Superior Court in which the defendant appears may order that the other complaint or indictment be transferred for disposition, subject to the written approval of the prosecuting attorney in each county.

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[Proposed amendment to Mass. R. Crim. P. Rule 37(a) clean version]

Rule 37. Transfer of cases

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(2) Superior Court. A defendant against whom a complaint or indictment is pending and who appears in Superior Court, whether under arrest or pursuant to a summons, and against whom a complaint or indictment is pending in a county other than that in which he appears, may state in writing that he wishes to plead guilty or nolo contendere, to waive trial in the county in which the other complaint or indictment is pending, and to consent to disposition of the case in the county in which he appears. The Superior Court in which the defendant appears may order that the other complaint or indictment be transferred for disposition, subject to the written approval of the prosecuting attorney in each county.

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SAC Rules of Criminal Procedure

Recommended Changes to Mass. R. Crim. P. 43(b)(3)(iii)

[Current Mass. R. Crim. P. 43(b)(3)]

Rule 43. Summary contempt proceedings

...

(b) Procedure

...

(3) (i) If, after the hearing provided for in subsection (b)(1), the presiding judge determines that summary contempt is not appropriate because the appropriate punishment for the alleged contempt exceeds three months imprisonment and a fine of \$2,000, the judge shall refer the alleged contemnor for prosecution under Rule 44. If necessary to maintain order in the courtroom or to assure the alleged contemnor's appearance, the judge may order the alleged contemnor held, subject to bail and/or conditions of release, for a reasonable period of time, not to exceed 15 days absent good cause shown, pending the issuance of a complaint or indictment under Rule 44(a).

(ii) If, after the hearing, the presiding judge determines that summary contempt is not appropriate because one or more of the requirements in subsection (a)(1), (a)(2), or (a)(3) is not satisfied, or for another reason, the judge shall discharge the alleged contemnor. The judge, in his or her discretion, may refer the matter to the government for investigation and possible prosecution, and nothing in this subsection shall preclude such investigation or prosecution, whether undertaken in response to the judge's referral or independently.

(iii) If, after the hearing, the presiding judge determines that summary contempt is appropriate, the judge shall make a finding on the record of summary contempt, setting forth the facts upon which that finding is based. The court shall further announce a judgment of summary contempt in open court, enter that judgment on the court's docket, and notify the contemnor of the right to appeal. The judge may defer sentencing, or the execution of any sentence, where the interests of orderly courtroom procedure and substantial justice require. If necessary to maintain order in the courtroom or to assure the contemnor's appearance, the judge may order the contemnor held, subject to bail and/or conditions of release, pending sentencing.

...

[Proposed amendment to Mass. R. Crim. P. Rule 43(b)(3) redline version]

Rule 43. Summary contempt proceedings

...

(b) Procedure

...

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[Proposed amendment to Mass. R. Crim. P. Rule 43(b)(3) clean version]

Rule 43. Summary contempt proceedings

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