

## **16A A.R.S. Rules Crim.Proc., Rule 26.12**

Rule 26.12. Compliance with sentence

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Arizona Revised Statutes Annotated [Currentness](#)

Rules of Criminal Procedure ([Refs & Annos](#))

VII. Post-Verdict Proceedings

Rule 26. Judgment, Pre-Sentence Report, Pre-Sentencing Hearing, Sentence ([Refs & Annos](#))

### **➔Rule 26.12. Compliance with sentence**

**a. Method of Payment--Installments.** The court may permit payment of any fine, restitution, or other monetary obligation to be made within a specified period of time or in specified installments. Restitution shall be payable as promptly as possible in light of the defendant's ability to pay.

**b. Method of Payment--To whom.** The payment of a fine, restitution, or other monetary obligation shall be made to the court, unless the court expressly directs otherwise. Monies received from the defendant shall be applied first to satisfy the restitution order and the payment of any restitution in arrears. The court or the person authorized by the court to accept payment shall, as promptly as practicable, forward restitution payments to the victim.

### **c. Action upon Failure to Pay a Fine, Restitution, Other Monetary Obligation, or to Comply with Court Orders.**

(1) *For Defendants Not on Supervised Probation.* If a defendant fails to pay a fine, restitution, or other monetary obligation, or is known by the court to have failed to comply with a term or condition of sentence within the prescribed time, the court shall, within 5 days, notify the prosecutor.

(2) *For Defendants on Supervised Probation.* If a defendant on supervised probation fails to pay a fine, restitution, or other monetary obligation, or is known by the court to have failed to comply with any other term or condition of probation within the prescribed time, the court shall give notice of such failure to the defendant's probation officer within the time limits set under sections (c)(1) and (3).

(3) *Time limits--Restitution and Non-Monetary Obligations.* If the payment or performance of an obligation does not involve the court, delinquency times shall run from the date on which the court or the probation officer becomes aware of failure to pay or comply.

(4) *Court Action upon Failure of Defendant to Pay Fine, Restitution, or Other Monetary Obligation or to Comply with Court Orders.* Upon the defendant's failure to pay a fine, restitution, or other monetary obligation, or failure to comply with court orders, the court may require the defendant to show cause why said defendant should not be held in contempt of court and may issue a summons or warrant for the defendant's arrest.

CREDIT(S)

Amended Nov. 12, 1991, effective Dec. 31, 1991; July 28, 1993, effective Dec. 1, 1993; June 9, 2005, effective Dec. 1, 2005.

## COMMENT

This rule is drawn in part from [Application of Collins, 108 Ariz. 310, 497 P.2d 523 \(1972\)](#); ABA, Standards Relating to Sentencing Alternatives and Procedures § 2.7 (Approved Draft, 1968); [Model Penal Code § 301.1\(1\)](#) (Prop. Off. Draft 1962); and the 1956 Arizona Rules of Criminal Procedure, Rule 342. It is intended to provide a constitutional means for imposing and enforcing a fine in light of *In re Collins*, supra. See [Williams v. Illinois, 90 S.Ct. 2018, 399 U.S. 235, 26 L.Ed.2d 586 \(1970\)](#) and [Tate v. Short, 91 S.Ct. 668, 401 U.S. 395, 28 L.Ed.2d 130 \(1971\)](#). Cf. [Ariz.Rev.Stat. Ann. § 13-1648\(a\)](#) (1956) [now § 13-810], and to provide an alternative to [Ariz.Rev.Stat. Ann. § 13-1657\(a\)\(2\)](#) (Supp.1972) [now § 13-901] which requires that a person who is to pay his fine over a period of time be placed on probation. See also [Ariz.Rev.Stat. Ann. § 13-1659-1661](#) (Supp.1972) [now §§ 13-808 and 13-810].

**Rule 26.12(a).** Section (a) supplements [Ariz.Rev.Stat. Ann. § 13-1659](#) (Supp.1972) [now § 13-808]. See *Application of Collins*, supra. Section (a) and [Ariz.Rev.Stat. Ann. § 13-1657\(A\)\(2\)](#) (Supp.1972) [now § 13-901] provide a reasonable alternative to automatic incarceration.

**Rule 26.12(b).** This provision clarifies to whom a fine or restitution must be paid. The power of a probation officer to receive fines and restitution payments was withdrawn by a recent amendment to [Ariz.Rev.Stat. Ann. § 12-253](#) (Supp.1972).

## COMMENT TO 1991 AMENDMENT

The 1991 amendment to Rule 26.12 was designed to implement the victim's right, under [Ariz. Const. Art. II, § 2.1\(A\)\(8\)](#), "To receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury." Under the amendment, restitution would have to be paid as promptly as possible in light of the defendant's financial resources.

The amendment was designed to deal with a problem that occurred under prior law. Court clerks were, at times, not forwarding restitution payments to victims as they were received, but were accumulating payments before remitting them to the victim. The amendment would encourage forwarding of payments by the clerk as promptly as practicable.

For related statutory provisions, see [A.R.S. § 13-804\(I\)](#) and (D), as amended by Laws 1991, Ch. 229 § 1 et seq., the "Victims' Rights Implementation Act."

## COMMITTEE COMMENT TO 1993 AMENDMENT

The 1993 amendment deleted the words "clerk of the superior" to adapt the rule to all courts, and substituted the word "court" for "clerk." Enforcement of restitution and fines is detailed in [A.R.S. § 13-810](#). As set forth in [A.R.S. § 13-810](#), a defendant not on probation can be subject to civil contempt for intentional failure to comply with the orders of the court.

## HISTORICAL NOTES

### Source:

Pen.Code 1901, §§ 1212, 1213.  
Pen.Code 1913, §§ 1339, 1340.  
Rev.Code 1928, § 5245.  
Code 1939, § 44-2302.  
Rules Cr.Proc. § 397.  
Laws 1953, Ch. 94, § 1.  
Code 1939, Supp.1953, § 44-3222.  
1956 Rules Cr.Proc., Rules 337, 342.

Adopted in part from California, see [West's Ann.Cal.Penal Code § 1215](#).

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Current with amendments received through 2/25/10

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