

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

08/28/2019

Clerk of the
Appellate Courts

**IN RE: RULE 12, SECTION 1, SECTION 2, AND FIRST-DEGREE
MURDER REPORT,
RULES OF THE TENNESSEE SUPREME COURT**

No. ADM2019 - 01537

ORDER

The Court is considering amending Rule 12, Sections 1 and 2 of the Rules of the Tennessee Supreme Court and the First-Degree Murder Report which is appended to Rule 12. The Court hereby publishes the proposed amendments for public comment and solicits written comments on the proposals from judges, lawyers, interested organizations, and the public. The proposed amendments are set out in the Appendix attached to this Order. The deadline for submitting written comments is October 28, 2019. Written comments may be e-mailed to appellatecourtclerk@tncourts.gov or mailed to

James M. Hivner, Clerk
Re: Tenn. Sup. Ct. R. 12
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

and should reference the docket number set out above.

The Clerk shall provide a copy of this Order to LexisNexis and to Thompson Reuters. In addition, this Order, including the Appendix, shall be posted on the Tennessee Supreme Court's website.

IT IS SO ORDERED.

PERCURIAM

APPENDIX A

PROPOSED AMENDMENTS TO TENN. SUP. CT. R. 12, SECTIONS 1 and 2

[New text is indicated by underlining/Deleted text is indicated by striking]

1. Trial Judge's Report in First-Degree Murder Cases.

(A) The report, a copy of which is appended to this rule, shall be completed in its entirety in all cases, including cases remanded by the appellate court for retrial and/or resentencing, in which the defendant is convicted of first-degree murder. This includes cases in which the defendant pleads guilty to first-degree murder. In the event more than one defendant is convicted of first-degree murder, a separate report shall be completed for each defendant.

(B) For cases resulting in a trial, prior to the hearing on the motion for new trial, the defendant's counsel shall complete Section B of the report (“Data Concerning Defendant”) and the district attorney general shall complete Section C (“Data Concerning the Victim, Co-Defendants, and Accomplices”). Counsel shall submit the completed sections to the trial judge at or before the hearing on the motion for new trial. The trial court shall complete all remaining parts of the report and shall submit the report to counsel for the defendant and the district attorney general for such comments as each may desire to make concerning the accuracy of the report. Such comments must be noted and delivered to the trial court no later than ten days after the trial court rules on the motion for new trial. Such comments shall be attached to and made a part of the report.

(C) For cases resulting in a guilty plea, the defendant’s counsel shall complete Section B of the report (“Data Concerning Defendant”) and the district attorney general shall complete Section C (“Data Concerning the Victim, Co-Defendants, and Accomplices”). Counsel shall submit the completed sections to the trial judge within thirty (30) days after the plea is entered. The trial court shall complete all remaining parts of the report and shall submit the report to counsel for the defendant and the district attorney general for such comments as each may desire to make concerning the accuracy of the report. Such comments must be noted and delivered to the trial court no later than ten days after receiving the report from the trial judge. Such comments shall be attached to and made a part of the report.

(D) (1) It shall be the responsibility of the trial court to compile, or cause to be compiled, all information required by this rule; to certify the accuracy of the report as to those matters within the trial court's knowledge; and to transmit the report forthwith to the Clerk of the Supreme Court, Nashville, along with a certified copy of the order disposing of the motion for new trial. This report and the order shall be transmitted to the Clerk of the Supreme Court within fifteen (15) days after the trial court rules on the motion for new trial, or within sixty (60) days after the

guilty plea is entered. A duplicate copy of the report and any comments of counsel attached thereto shall be filed with the record on appeal.

(2) The Administrative Office of the Courts is authorized to establish and implement a system for the electronic submission of the first-degree murder report required by Part 1(a) of this Rule.

Upon initial implementation, it shall be the responsibility of the trial judge to compile, or cause to be compiled, all information required by this rule; for the entry of such information into the electronic system; and to certify the accuracy of the report as to those matters within the trial court's knowledge. The report, once certified by the trial judge in the system and submitted, will be transmitted electronically to the Clerk of the Supreme Court. The trial judge must include with the electronic submission of the first-degree murder report any necessary or required documents as required by this rule by uploading such documents into the system. These may include comments of counsel and a copy of the order disposing of the motion for new trial. A certified copy of the order disposing of the motion for new trial is not required.

Upon implementation of the system, the first-degree murder report and any necessary or required documents shall be transmitted to the Clerk of the Supreme Court via the electronic system within fifteen (15) days after the trial court rules on the motion for new trial, or within sixty (60) days after the guilty plea is entered.

Upon implementation of the system, submission of all first-degree murder reports through the electronic system will be mandatory, absent exigent circumstances.

2. Appeal of Capital Case. ~~upon Affirmance by Court of Criminal Appeals.~~

A) 1) For offenses committed prior to July 1, 2019, in accord with Tenn. Code Ann. § 39-13-206(a)(1), upon affirmance by the Court of Criminal Appeals of the conviction and sentence of death, the Appellate Court Clerk shall forthwith transmit the record to the Supreme Court for immediate docketing. The Clerk shall promptly notify the parties of the docketing, the date of filing of the record in this Court, and of the times for filing and service of briefs under T.R.A.P. 29(a). The case shall proceed in accordance with the Tennessee Rules of Appellate Procedure except as otherwise required by this Rule. No party shall incorporate or adopt by reference any brief previously filed by that party in the Court of Criminal Appeals, either in whole or in part; and any brief filed in this Court shall be complete, presenting all issues, arguments and facts, without any need for reference to any brief previously filed in the Court of Criminal Appeals. A copy of the opinion of the Court of Criminal Appeals shall be appended to the appellant's brief.

2) For offenses committed on or after July 1, 2019, in accord with Tenn. Code Ann. § 39-13-206(a)(1), upon ~~affirmance by the Court of Criminal Appeals~~ of the conviction and sentence of death becoming final in the trial court, the Appellate Court Clerk shall forthwith transmit the record to the Supreme Court for immediate docketing. The Clerk shall promptly notify the

parties of the docketing, the date of filing of the record in this Court, and of the times for filing and service of briefs under T.R.A.P. 29(a). The case shall proceed in accordance with the Tennessee Rules of Appellate Procedure except as otherwise required by this Rule. ~~No party shall incorporate or adopt by reference any brief previously filed by that party in the Court of Criminal Appeals, either in whole or in part; and any brief filed in this Court shall be complete, presenting all issues, arguments and facts, without any need for reference to any brief previously filed in the Court of Criminal Appeals. A copy of the opinion of the Court of Criminal Appeals shall be appended to the appellant's brief.~~

B) Prior to the setting of oral argument, the Court shall review the record and briefs and consider all errors assigned. The Court may enter an order designating those issues it wishes addressed at oral argument. The order shall afford the parties additional time for the filing of any supplemental briefs addressing these issues. In all cases, the Court will conduct the review as mandated by Tenn. Code Ann. § 39-13-206(c)(1).

APPENDIX B

PROPOSED REVISED TENN. SUP. CT. R. 12 FIRST-DEGREE MURDER REPORT

[New text is indicated by blue underlining/ Deleted text is indicated by striking]

**REPORT OF THE TRIAL JUDGE
IN FIRST DEGREE MURDER CASES¹**

IN THE _____ COURT OF _____ COUNTY

STATE OF TENNESSEE

Case No. _____

v.

Sentence of Death ()

or

Life Without Parole ()

or

Life Imprisonment ()

DEFENDANT'S NAME HERE
(Defendant)

A. DATA CONCERNING THE TRIAL OF THE OFFENSE

1. a. Status of the Case: Original Trial () Retrial/Resentencing ()

b. Brief summary of the facts of the homicide, ~~including the means used to cause death:~~

c. Means/method used to cause death:

- () shooting
- () stabbing
- () throat slashing
- () drowning
- () beating/blunt trauma
- () strangling or suffocating
- () poisoning
- () bombing
- () burning
- () pushing from a high place
- () struck by a vehicle

¹ A separate report must be submitted for each defendant convicted under T.C.A. § 39-13-202 irrespective of the sentence received. This includes defendants who have pleaded guilty to first degree murder.

- child abuse/neglect
- Other: _____

e. d. Location/scene of crime:

- victim's residence
- defendant's residence or place of business/employment
- victim's place of business/employment
- hotel/motel
- commercial establishment (bar, store, restaurant, gas station, etc.)
- street, sidewalk, or parking lot
- park or school grounds
- field, woods, or rural area
- jail or prison
- public or private vehicle
- Other: _____

~~d.~~ e. Motivation for the killing, if known (select all that apply):

- long term hatred of victim
- obsession/control
- revenge/retaliation
- racial, religious or other bias or animosity
- pecuniary or other gain
- sexual or other pleasure or gratification for the killing
- jealousy
- silence a witness
- escape apprehension, trial, punishment, or confinement for another offense
- none apparent, but evidence suggests that action was drug-influenced
- none apparent/senseless killing/apparent indifference to life
- unreasonable self-defense or defense of others
- false belief due to mental illness
- other: _____
- unknown

e. f. First degree murder conviction type:

- A premeditated and intentional killing of another
- A killing of another in perpetration of or attempt to perpetrate any:
 - first degree murder
 - act of terrorism
 - arson
 - rape
 - robbery
 - burglary

- theft
- kidnapping
- aggravated child abuse
- aggravated child neglect
- rape of a child
- aggravated rape of a child
- aircraft piracy

A killing of another committed as the result of the unlawful throwing, placing, or discharging of a destructive device or bomb

2. Separate Offenses:
- a. Were other offenses tried in the same trial? Yes No
 - b. If yes, list those offenses, disposition, and punishment:
3. How did the defendant plead? Guilty Not Guilty

If the defendant pleaded guilty with no sentencing hearing, skip to Section B.

4. Was guilt determined with or without a jury? With Without
5. Did you as "thirteenth juror" find the defendant was guilty beyond a reasonable doubt? Yes No
6. Did the defendant waive jury determination of punishment? Yes No
7. a. Did the State file a notice of intent to seek the death penalty? Yes No
- b. Did the State file a notice of intent to seek life imprisonment without parole? Yes No
- c. Did the State withdraw its notice of intent to seek the death penalty, either formally or informally? Yes No
- d. Did the State withdraw its notice to seek life imprisonment without parole either formally or informally? Yes No
- e. Who sentenced the defendant? Judge Jury
Automatic/life sentence
- f. What sentence was imposed? Death Life Without Parole Life
- g. If life imprisonment was imposed, was it imposed as a result of a hung jury? Yes No
8. Was victim impact evidence introduced at trial? Yes No
9. Aggravating Circumstances, T.C.A. § 39-13-204(i)
- a. Were statutory aggravating circumstances found? Yes No
 - b. Which of the following statutory aggravating circumstances were instructed, and which were found? (Please note the version of the statutory aggravating circumstance instructed in the blanks when applicable; i.e., the 1989 version or the 1995 version)

	Instructed	Found
(1) Youth of victim _____	()	()
(2) Prior convictions _____	()	()
(3) Risk of death to others _____	()	()
(4) Murder for remuneration _____	()	()
(5) Heinous, atrocious, or cruel _____	()	()
(6) Avoid arrest or prosecution _____	()	()
(7) Committed in conjunction with another felony _____	()	()
(8) Committed while in custody _____	()	()
(9) Victim was member of law enforcement, etc. _____	()	()
(10) Victim was judge, district attorney, etc. _____	()	()
(11) Victim was elected official, etc. _____	()	()
(12) Mass Murder _____	()	()
(13) Mutilation of the body after death _____	()	()
(14) Elderly or particularly vulnerable victim _____	()	()
(15) Committed in the course of an act of terrorism _____	()	()
(16) Committed against a pregnant woman, and the defendant intentionally killed the victim knowing she was pregnant	()	()
(17) Committed at random and the reasons for the killing are not obvious or easily understood _____	()	()
(18) <u>Sold or distributed a substance containing fentanyl, carfentanil, other opiate with intent and premeditation to commit murder</u>	()	()
(19) Other ² _____		

c. Relate any relevant and material details of the aggravating circumstances found by the jury that were outside the norm, either so as to favor leniency or to favor severity of punishment:

10. Mitigating Circumstances, T.C.A. § 39-13-204(j)

a. Were mitigating circumstances raised by the evidence? Yes () No ()

b. If so, what mitigating circumstances were raised by the evidence?

	Yes	No
(1) No significant prior criminal history	()	()
(2) Extreme mental or emotional disturbance	()	()
(3) Participation or consent by victim	()	()
(4) Belief that conduct justified	()	()
(5) Minor accomplice	()	()
(6) Extreme duress or substantial domination	()	()
(7) Youth or advanced age of defendant	()	()

² In this space, the trial court should list by statutory designation any statutory aggravating factor that was instructed, but is not in the prior list.

- (8) Mental disease or defect or intoxication () ()
(9) Other (please explain)³: _____ () ()

- c. Relate any relevant and material details of the mitigating circumstances supported by the evidence that were outside the norm, either so as to favor leniency or to favor severity of punishment:

- d. If tried with a jury, was the jury instructed regarding all the mitigating circumstances requested by the defense?

Yes () No ()

If no, list which circumstances were not included as mitigating circumstances and explain why such circumstances were omitted: _____

11. Was there any evidence that at the time of the offense the defendant was under the influence of narcotics, dangerous drugs, or alcohol which actually contributed to the offense? Yes () No ()

If yes, please explain: _____

12. Brief impression of the trial judge as to the conduct and/or demeanor of defendant at trial and sentencing that would indicate remorse, lack of remorse, mental health issues, or any other characteristics relevant to punishment :

³ In the space provided, please list all nonstatutory factors raised by the evidence.

B. DATA CONCERNING THE DEFENDANT⁴

1. Name: _____ 2. Birth Date _____
Last, First, Middle month/date/year
3. Sex: _____
4. Marital Status: () Never Married
() Married
() Divorced
() Spouse deceased
() Unknown
5. Race: () American Indian or Alaska Native
() Asian
() Black or African American
() Native Hawaiian or other Pacific Islander
() White
6. Ethnicity: Is the defendant of Hispanic or Latino:
Yes () No ()
7. Children: Number: _____
Ages: _____
8. Parents: Father—living? Yes () No () Unknown ()
Mother—living? Yes () No () Unknown ()
9. Education: Highest Grade or Level Completed: _____
Unknown ()
- 10 a. Was any evidence presented regarding an IQ score of the defendant?
Yes () No ()
- b. If yes, what were the results? IQ below 75 _____
IQ 76 to 85 _____
IQ 86-100 _____
IQ above 100 _____
- 11 a. Was the issue of defendant's intellectual disability under T.C.A. § 39-13-203 raised?
Yes () No ()
- b. If so, did the court find that the defendant had an intellectual disability as defined in T.C.A. § 39-13-203(a)?
Yes () No ()
- 12 a. Was a psychiatric or psychological evaluation performed that is part of the trial

⁴ Defense counsel may omit any information that may, if disclosed, impair the client's interests.

record?

Yes () No ()

b. If yes, summarize pertinent psychiatric or psychological information and/or diagnoses revealed by such evaluation: _____

13. Employment record of defendant at or near time of offense, including (if known) type of job, pay, dates job held and reason for termination:

() Unknown

14. Defendant's military history, including type of discharge:

() Unknown

15 a. Does the defendant have a record of prior convictions? Yes () No ()

b. If yes, list the offenses, the dates of the offenses, and the sentences imposed:

Offense	Date	Sentence
---------	------	----------

1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____

16. Was the defendant a resident of the community where the homicide occurred?

Yes () No ()

17. Nature of defendant's role in offense:

() committed homicidal act together with a co-defendant

() primary assailant

() other _____

18. Any other noteworthy/significant information about the defendant:

12. Was the victim held hostage during the crime?

- _____ Yes—Less than one (1) hour
_____ Yes—More than one (1) hour
_____ No

If yes, give details: _____

13 a. Describe the physical harm and/or injuries inflicted on the victim:

b. Was the victim tortured? If so, state the nature of the torture:

14. Co-defendants:

a. Were there any co-defendants in the trial? Yes () No ()

b. If yes, what conviction(s) and sentence(s) were imposed on them?

c. Nature of co-defendant's role in offense:

() committed homicidal act together

() primary assailant

() other _____

d. Any additional comments concerning co-defendant(s):

e. Did the co-defendant(s) testify at the defendant's trial Yes () No ()

15. Other Accomplices:

a. Were there any persons not tried as co-defendants who the evidence showed participated in the commission of the offense with the defendant?

Yes () No ()

b. If yes, state the nature of their participation, whether any criminal charges have been filed against such persons as a result of their participation, and the disposition of such charges, if known:

-
- c. Did the accomplice(s) testify at the defendant's trial? Yes () No ()

D. REPRESENTATION OF THE DEFENDANT

1. Was the defendant represented by counsel at trial: Yes () No/Pro Se ()
2. If the defendant was Pro Se at trial:
- a. Was the defendant represented at any time by counsel? Yes () No ()
 - b. If the defendant did have prior representation, list dates of representation and answer the remaining questions as they relate to prior counsel. Attach additional sheets if necessary to include information on each attorney.
From _____ to _____
From _____ to _____
 - c. Did the defendant have elbow counsel at trial? Yes () No ()
3. How many attorneys represented the defendant? _____
(If more than one counsel served, or the defendant has prior counsel, other than those at trial, answer the following questions as to each counsel and attach a copy for each to this report)
4. Name of counsel: _____
5. In what role did counsel serve?
- Lead/First Chair ()
 - Co-Counsel/Second Chair ()
 - Elbow Counsel (pro se defendant) ()
6. Date counsel secured: _____
7. How was counsel secured (may check more than one):
- a. Retained by defendant ()
 - b. Appointed by Court ()
 - c. Public Defender ()
 - d. Pro Bono ()
8. If counsel was appointed by court, was it because:
- a. Defendant unable to afford counsel ()
 - b. Defendant refused to secure counsel ()
 - c. Elbow Counsel (Pro Se defendant) ()
 - d. Other (explain) ()
-
-

9. How many years has counsel practiced law:
- a. 0 to 5 ()
 - b. 5 to 10 ()
 - c. Over 10 ()
10. What is the nature of counsel's practice?
- a. Mostly civil ()
 - b. General ()
 - c. Mostly criminal ()
11. Did counsel serve throughout the trial? Yes () No ()
12. If not, explain in detail: _____

13. Other significant data about defense representation: _____

E. GENERAL CONSIDERATIONS

1. a. Were jurors selected from the same county where offense occurred?
 Yes () No ()
- b. If no, from which county were the jurors selected? _____
- c. Was a change of venue requested? Yes () No ()
- d. If yes, was it granted? Yes () No ()
- e. Reasons for change, if granted:

2. How many alternate jurors were selected? _____
3. What percentage of the population, according to the most recent census, of the county from which the jury was selected is the same race as the defendant?
- a. Under 10% ()
 - b. 10% to 25% ()
 - c. 25 % to 50% ()
 - d. 50% to 75% ()
 - e. 75% to 90% ()
 - f. Over 90% ()
4. Were members of the defendant's race represented on the jury? Yes () No ()

5. Note the number of jurors/alternate jurors of each race (if race of a juror/alternate juror is unknown, please note that below as well):

Jurors	Alternate Jurors	
_____	_____	American Indian or Alaska Native
_____	_____	Asian
_____	_____	Black or African American
_____	_____	Native Hawaiian or other Pacific Islander
_____	_____	White
_____	_____	Unknown

6. Note the number of jurors/alternate jurors who are of Hispanic or Latino origin:

Jurors	Alternate Jurors
_____	_____

7. Note the number of jurors/alternate jurors of each sex:

Jurors	Alternate Jurors	
_____	_____	Male
_____	_____	Female

F. CHRONOLOGY OF CASE

Elapsed Days

1. Date of offense _____
2. Date of arrest _____
3. Date trial began/guilty plea entered _____
4. Date sentence imposed _____
5. Date post-trial motions ruled on _____
6. Date trial judge's report completed _____
- *7. Date received by Supreme Court _____
- *8. Date sentence review completed _____
- *9. Total elapsed days _____
10. Other _____

*To be completed by Supreme Court

This report was submitted to the defendant's counsel and to the attorney for the State for such comments as either desired to make concerning its factual accuracy.

	State	Defense Counsel
1. Comments are attached	()	()
2. Had no comments	()	()
3. Has not responded	()	()

I hereby certify that I have completed this report to the best of my ability and that the information herein is accurate and complete.

Date

_____, Judge

Court of _____ County

Judicial District