

# INSTRUCTIONS

## CRIMINAL COURT MATTER

### MOTION FOR STAYED STAGGERED SENTENCE REVIEW HEARING

(AVOID JAIL TIME OR ELECTRONIC HOME MONITORING)

Forms you will need for this process:

- *Notice of Motion & Motion to Stay Staggered Sentence*
- *Affidavit in Support of Motion to Stay Staggered Sentence*
- *(2) Affidavit of Service*

#### What you need to do

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 the court (electronically, 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 in more detail below.

#### 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 a question about this court form or instruction?

- Call the 10<sup>th</sup> 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/Find-a-Lawyer.aspx](http://www.MNCourts.gov/Find-a-Lawyer.aspx)

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 your court administrator or call the Minnesota State Law Library at 651-296-2775.

## **General Information about Requesting to Stay a Staggered Sentence (Avoid Jail Time or Electronic 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 thirty (30) 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.**

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 electronic home monitoring. 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*

AND

- You want your sentencing judge to review and stay your sentence before the start of the next phase of jail time or electronic home monitoring. Again, a stay means you don’t have to serve the jail time or start on EHM.

### **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 electronic home monitoring should be stayed.

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

**Step 1**

**Gather Important Information and Contact Court Administration about a Hearing Date**

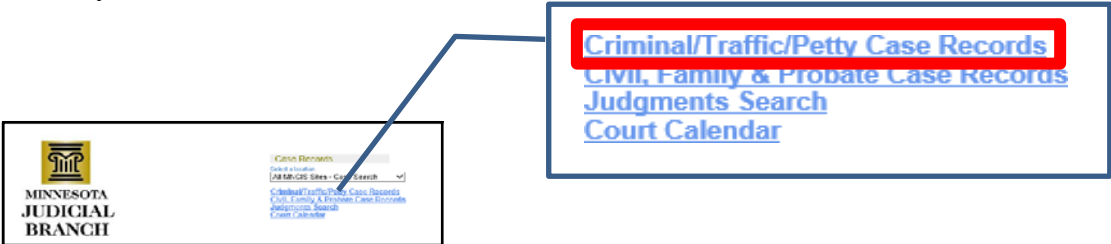
**Gather Important Information**

You are going to need the following information:

1. Your court file number (also known as a case number); and
2. Name and address of the prosecutor. You may be able to locate the name and phone number of the prosecutor on the “**Register of Actions**,” which is available at the courthouse and online.



To find the “**Register of Actions**” online, go to [www.mncourts.gov/publicaccess](http://www.mncourts.gov/publicaccess). Click on “Minnesota District (Trial) Court Case Search.” If you read and accept the terms and conditions of use, you can search court records online.



Click on “Criminal/Traffic/Petty Case Records,” to search by case number or your name.

**Contact Court Administration**

It is important that you check with your local [Court Administration](#) to see how to schedule a hearing for your motion. If you do not schedule a hearing, the court will not do anything with your motion. You will write the hearing date on the **Notice of Motion & Motion to Stay Staggered Sentence** (see Step 2 (B) below).

**Obtain a hearing date.** Your hearing should be at least thirty (30) days before the date you were ordered 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 (21) days prior to the hearing date. You may contact your local court administration at the following phone numbers:

Anoka	(763) 760-6575	Pine	(320) 591-1500
Chisago	(651) 213-7010	Sherburne	(763) 765-4600
Isanti	(763) 290-7020	Washington	(651) 430-6279
Kanabec	(320) 679-6400	Wright	(763) 682-7548

**Step 2**  
**Fill out the Notice of Motion & Motion to Stay Staggered Sentence**

**Section A: The “Caption”**

<b>1</b>	<b>State of Minnesota</b>	<b>District Court</b>
	County _____	Judicial District: Tenth Court File Number: _____ Case Type: Criminal
State of Minnesota,		<b>A</b>
vs <b>2</b>		
Defendant (Your name) _____		<b>NOTICE OF MOTION &amp;          MOTION TO STAY          STAGGERED SENTENCE</b> Minn. Stat. § 169A.275, subd. 6(b)

1. At the top of the page, write:
  - The **county** where the case is located;
  - The **judicial district** number (each county is located in one of ten [judicial districts](#)); and
  - 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** has already been filled in for you.
  
2. Write your name on the line for “Defendant.”

**Section B: The Notice of Hearing**

<p><b>Notice to Prosecutor:</b> I move the sentencing Court for a review hearing to stay the pending executed jail time and/or electronic home monitoring that the Honorable _____ Judge of District Court, sentenced. I request that this hearing be set in front of my sentencing judge, the Honorable _____ on _____ (date) at _____ . m. (time); at _____ (location).</p>	<b>B</b>
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Fill in the details of the hearing (judge, date, time, and location).

**Section C – The Motion:**

This has already been partially filled out for you. You should read it and mark the type of jail you would like to skip. If you would like to add additional information, please do so.

<b>C</b>	<u><b>MOTION</b></u>
<p>I request that my <input type="checkbox"/> executed jail time or <input type="checkbox"/> 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.</p>	

**Section D: The Signature Block**

Dated: _____	Signature _____
County and State where signed _____	Printed Name: _____
	Address: _____
	City/State/Zip Code: _____
	Telephone: (____) _____

D

Date and sign. Then write the name of the county and state you are in when you signed it, and print your personal contact information below your signature.

**Step 3**

**Fill out Your Affidavit in Support of Motion to Stay Staggered Sentence**

Fill out the *Affidavit in Support of Motion to Stay Staggered Sentence* form. The **affidavit** tells the court and the other party **what** you are asking of the court and **why** you are asking for it.

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.

If the judge is unable to read your handwriting, the court is likely to reject your documents and you will have to start over.

**Section A – The Caption**

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

<b>State of Minnesota</b>		<b>District Court</b>
County _____	Judicial District: Tenth Court File Number: _____ Case Type: Criminal	
State of Minnesota,		
vs	<div style="border: 1px solid black; width: 20px; height: 20px; text-align: center; margin: 0 auto; font-weight: bold; font-size: 1.2em;">A</div>	<b>AFFIDAVIT IN SUPPORT OF MOTION TO STAY STAGGERED SENTENCE</b>
_____ Defendant (Your name)		
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. <input type="checkbox"/> I am sober. I have been sober for ____ <input type="checkbox"/> year(s) and/or <input type="checkbox"/> month(s).		
2. <input type="checkbox"/> I am in good standing with the terms and conditions of my probation.		
3. <input type="checkbox"/> I have contacted probation/probation officer. My probation officer's name is _____ or <input type="checkbox"/> I do not have an assigned probation officer.		
4. These are the steps I take to remain sober:		
_____		
_____		
_____		
_____		
5. <b>How being chemically free has changed my life.</b> (It is important to include information about groups, organization, and people that have helped you remain chemically free.)		
_____		
_____		

B

## Section B – The Affidavit

Fill out the rest of the form addressing your sobriety, sobriety length, your standing with probation, your contact with probation or probation officer, the steps you take to remain sober, and “**How being chemically-free has changed my life.**” Here, you may want to include information about groups, organizations, and people that have helped you remain chemically free.

## Section C- Other

If you are including anything other than your *Affidavit*, check the “Other” box and write what else you are including to support your request. For example, you may want to include letters from AA sponsors, counselors, family members, a significant other, clergy, employers/co-workers, and friends.

<b>C</b>	5. I have attached the following document(s) or affidavit(s) in support of my request:
	<input type="checkbox"/> Other: _____
	<input type="checkbox"/> Other: _____
	<input type="checkbox"/> Other: _____

## The Signature Block / Penalty of Perjury

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.

<b>I declare under penalty of perjury that everything I have stated in this document is true and correct. Minn. Stat. § 358.116.</b>	
Dated: _____	Signature _____
County and State where signed _____	Printed Name: _____
	Address: _____
	City/State/Zip Code: _____
	Telephone: (____) _____

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

**Step 4**

**Make Copies and Serve Copies**

You will need to make a copy of the *Notice of Motion & Motion to Stay Staggered Sentence* and your *Affidavit in Support of Motion to Stay Staggered Sentence* for the (1) prosecuting authority, (2) for probation, and for (3) yourself. Be sure to bring your copy with you to court when you go to the hearing.

- Service must be done by someone *not a party to the action* who is over the age of 18. This could be a neighbor, friend, relative, significant other, a process server company, the Sheriff's Office, etc.
- Motions must be served personally (hand delivered) at least twenty-one (21) days before the hearing or mailed (via first-class mail) to the addresses of the prosecutor and corrections/probation at least twenty-four (24) days before the hearing.

**NOTE:** Papers **cannot** be served on a legal holiday.

***To serve the papers personally:***

The server (the person giving the documents to the other party who is **NOT** you) hands to someone in the prosecuting authority's office and probation's office each a copy of the *Notice of Motion & Motion to Stay Staggered Sentence, Affidavit in Support of Motion to Stay Staggered Sentence*, and any attachments.

***To serve the papers by mail:***

Put your address as the return address in the upper left corner of the envelopes, even though you won't be the person mailing the envelopes. The server places a copy of the *Notice of Motion & Motion to Stay Staggered Sentence, Affidavit in Support of Motion to Stay Staggered Sentence*, and any attachments in an envelope addressed to the prosecuting authority's office and another copy in an envelope to probation's office. The envelopes should be mailed using first class mail. The server may want to take the envelopes to the post office to be weighed to make sure they have the right amount of postage.

**Step 5**

**Fill out *Affidavit of Service* (Proving the Prosecuting Authority and Probation Office Were Served)**

**After** the paperwork is served on the prosecuting authority and probation office (***not before***), the server must fill out two [\*Affidavit of Service\*](#) forms. These forms prove to the court that papers were served on the prosecuting authority and probation office.

**HOW TO FILL OUT THE *AFFIDAVIT OF SERVICE* FORM:**

You can fill out the top of the form:

Fill in the caption the same you did for the *Motion* (see Step A, above).

<b>State of Minnesota</b>		<b>District Court</b>
County _____	Judicial District: Tenth	
	Court File Number: _____	
	Case Type: Criminal	
State of Minnesota _____		
Plaintiff		
vs		
<b>Affidavit of Service</b>		
Defendant _____		
STATE OF MINNESOTA		
COUNTY OF _____		
(County where Affidavit signed)		

The server should fill out the rest of the form.

I, \_\_\_\_\_, state that I am at least 18 years of age  
(Name of person who hand delivered or mailed documents)

having been born on \_\_\_\_\_ and that on \_\_\_\_\_  
(Date of Service)

I served the following documents, namely \_\_\_\_\_  
(Title of Documents hand delivered or mailed)

upon (check one)  Prosecutor  Corrections/Probation

In the section shown above, the server needs to fill in five things:

1. Server's name;
2. Server's date of birth (to show that the server is at least 18 years old);
3. The date the server either mailed or hand-delivered the papers;
4. The names of the papers that were served: *Notice of Motion & Motion to Stay Staggered Sentence, Affidavit in Support of Motion to Stay Staggered Sentence* and any attachments;
5. A check mark or "x" showing which party was served. For this set of forms, the "Prosecutor" box should be checked on one of the forms and the "Corrections/Probation" box should be checked on the other.

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**Next, the server checks *HOW* the other parties were served** (personal service or service by mail).

If the server **hand-delivered** a copy of the forms to the prosecuting authority and probation office, or to an employee in the prosecutor's office or probation's office, then the server fills out this section of the form:

Service was done as follows: (check all that apply)

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

Personal Service

The server needs to do two things in this section if the prosecuting authority and probation were **personally served**:

1. Check the box next to the words "Personal service."
2. Write the name of the person(s) the server gave the papers to. You might consider writing the name of the agencies (for example: "Koochiching County Attorney's Office and Koochiching Community Correction/Probation"). The server may write the name of the person the documents were handed to here.



If the server **mailed** a copy of the papers to the prosecuting authority and probation, the server needs to do four things in this section.

1. Check the box next to the words “Mail service.”
2. Write the name of the prosecutor and probation officer (the name that was put on the envelope).
3. Write the address(es) that the papers were mailed to.
4. Write the city, state, and zip code that the server was in when they mailed the papers.

Service  
by Mail

**1**  Mail service: By mailing a true and correct copy of the documents by first class mail to (name)

**2** \_\_\_\_\_ at his/her last known address at

**3** \_\_\_\_\_

(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

**4** City of \_\_\_\_\_, State of \_\_\_\_\_ Zip Code \_\_\_\_\_.

The server also has to fill out the last section on the form:

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

Dated: \_\_\_\_\_

Signature \_\_\_\_\_

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

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

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

Telephone: \_\_\_\_\_

E-mail address: \_\_\_\_\_

County and State where signed \_\_\_\_\_

The server has to sign the *Affidavit of Service* under penalty of perjury, and has to fill in the information requested.

After the server signs the *Affidavit of Services*, make one copy for your records. The originals are filed with the court as part of Step 6 below.

## Step 6

### File with Court Administration

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

- Original *Notice of Motion & Motion to Stay Staggered Sentence*;
- Original *Affidavit in Support of Motion to Stay Staggered Sentence*;
- Original (2) *Affidavit(s) of Service*; and/or
- Original Attached documents in support of motion.



The forms must be filed before the hearing date, or your hearing may be cancelled. Contact your local court administration to find out how many days before the hearing the forms must be filed.

## Step 7

### Go to Your Hearing

To prepare for your hearing, it is a good idea to look at the court rules. You can visit a [law library](#) to read the court rules.

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 judicial officer may dismiss your motion.

Bring your copies of the paperwork with you to the hearing. If the prosecuting authority 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 [get legal advice](#) before your court date.

**State of Minnesota**

**District Court**

County _____	Judicial District: Tenth Court File Number: _____ Case Type: Criminal
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State of Minnesota,

**NOTICE OF MOTION &  
MOTION TO STAY  
STAGGERED SENTENCE**  
Minn. Stat. § 169A.275, subd. 6(b)

vs

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

**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 that the Honorable \_\_\_\_\_, Judge of District Court, sentenced. I request that this hearing be set in front of my sentencing judge, the Honorable \_\_\_\_\_ on \_\_\_\_\_ (date) at \_\_\_\_\_ . m. (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.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
County and State where signed

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

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

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

Telephone: (      ) \_\_\_\_\_

**State of Minnesota**

**District Court**

County	Judicial District: Tenth Court File Number: _____ Case Type: Criminal
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State of Minnesota,

vs

**AFFIDAVIT IN SUPPORT  
OF MOTION TO STAY  
STAGGERED SENTENCE**

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

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 \_\_\_\_\_  year(s) and/or  month(s).
2.  I am in good standing with the terms and conditions of my probation.
3.  I have contacted probation/probation officer. 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. **How being chemically free has changed my life.** (It is important to include information about groups, organization, and people that have helped you remain chemically free.)

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