PRESENTENCE REPORT HANDBOOK

National Institute of Law Enforcement and Criminal Justice
Law Enforcement Assistance Administration
United States Department of Justice

PRESENTENCE REPORT HANDBOOK

By

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ABSTRACT

The focus of this Prescriptive Package is the presentence investigation and report, including the organizational environment in which presentence activities are conducted. The package is based on a comprehensive state-of-the-art survey which included a complete review of the literature and a review of the operational procedures and presentence formats used by 735 state and local probation agencies. As a result of their survey, the authors found that during the 100 year history of the presentence report there has been an increasing emphasis on the quantity of the data collected and presented to the courts. The quality of the information in terms of its relevance to the sentencing decision has seldom been questioned. Over the years there has been a continuity in format and data indicating that tradition is an unchallenged idol in most jurisdictions. The principle product of this research effort is a series of sixty-four recommendations or "prescriptions" designed to assist the courts and probation administrators in developing a more systematic and analytical approach to presentence report design and utilization. The recommendations address such issues as report format and content; conditions for probation; development of probation supervision plans as part of the presentence investigation; resource allocation including the general organization and management of presentence report activities; scheduling; use of nonprofessional personnel; case record management including the issue of confidentiality; and the development of standard operating procedures.

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PREFACE

Clearly, there is a difference between process and product. When work was initiated on this Prescriptive Package, there was an uncertain and somewhat uneasy expectation that the product would be a model of a presentence report which could be utilized by most jurisdictions, for most offenses and/or offenders, most of the time. As energies were further invested, however, it became clear that the product would not be—indeed, could not be—"the" model presentence report. Rather, it became certain that the *product* would be a *process* by which jurisdictions with different requirements could develop presentence report formats and content to meet their unique needs; indeed, any attempt to prepare "the model for nationwide utilization would have been presumptuous. Concurrently, an argument that the great diversity of individual jurisdictional requirements for presentence reports precluded any uniform or consistent prescriptions nationwide did not ring true—particularly to the extent that process rather than product was the focus of inquiry—so the argument was rejected.

Accordingly, this Prescriptive Package is process-oriented and based upon an operational perspective that information requirements for sentencing and corrections vary significantly among American criminal justice jurisdictions and that the jurisdictions themselves must determine their presentence needs. But even as there is recognition that jurisdictional uniqueness mandates flexibility in presentence report practice, there is concurrently a consensus that presentence investigations and reports are critical to the sentencing process and the correctional activities which follow it. The assessment of the offender to provide the court a rational basis for selecting the most appropriate correctional alternative for case disposition is essential. The average of two or three weeks between a plea of guilty or a finding of guilt and sentencing—the time used by the probation agency to conduct an investigation and prepare a report—is a justifiable investment of criminal justice resources. The presentence process increases the probability of an appropriate court dispostion which will best meet the needs of the individual offender and protect society by minimizing the likelihood of further law violations.

It is perhaps coincidental that the first presentence reports were prepared in Boston almost 100 years ago. While it would be over-dramatic to indicate that we stand at a crossroads in terms of presentence activities, it would be accurate to indicate that major changes in theory and practice may be appropriate for the second century.

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ACKNOWLEDGMENTS

Although but one name appears as author of this prescriptive package, it is essential to recognize the significant contributions of a number of individuals. It is equally important to note that the identification of contributors to the development of the prescriptive package cannot be construed as representing either their individual or collective endorsement of the total package: the author alone must be held responsible for content.

The contributions of NILECJ's Lou Biondi must be established first. While possessing the formidable and threatening title of project monitor, Lou became concurrently friend, confidant, counsel and sounding board. He allowed the project to breathe, even as he insisted upon compliance with appropriate regulation and deadline. Lou indeed monitored the project; he also was—in every sense of the word—a colleague.

Jack Cocks and Merrill Smith of California, friends of long-standing, shared much of the day-to-day anguish of prescriptive package preparation. These two year-long and part-time consultants were responsible in large measure for the national survey of presentence practice and the analysis of data which appears in the report. We also were blessed with the written and face-to-face contributions of 15 individuals of national prominence with substantial expertise and correctional credentials of impeccable order. Joining together at meetings in Los Angeles and Washington, D.C., they managed to survive the conflict which inevitably ensues when academician, administrator, practitioner and researcher are joined together by an outside catalyst. The consultants:

Donald L. Chamlee	Washington, D.C.
Julius Debro	Maryland
Kenneth F. Fare	California
Robert H. Fosen	Maryland
Anthony C. Gaudio	Virginia
Daniel Glaser	California
Jewel Goddard	Oregon
Robert E. Keldgord	Arizona
Paul W. Keve	Delaware
Walter D. Morse	California
Vincent O'Leary	New York
Peter Preiser	New York
Dale K. Sechrest	Maryland
Ellis Stout	Washington
John A. Wallace	Washington, D.C.

The perceptions and insights of these fifteen insured a blend of pragmatism and scholarship, political reality and foresight, and concern for the offender, the criminal justice system as a totality and the community. Their contributions simply could not be duplicated.

Then too, we were fortunate to have an administrative assistant of unusual organizational ability who was able to keep the train on the track and on time. Dennis Hatch, a University of Southern California graduate degree holder in Public Administration, served as the engineer for this prescriptive package as well as its sister package, Special Programs in Probation and Parole prepared by Kim Nelson. And to these administrative skills were added the editorial compe-

tences of Mary Harrison and Brenda Maloney, each one of which (or is it both of whom) devoted many hours to unsplitting infinitives, undangling participles, and most importantly, contributing to the clarity and internal consistency of the document. To George Carr, accountant from the Sacramento based American Justice Institute, we owe a special thanks for record-keeping and management of our resources.

One other group deserves identification and it is with regret that space does not permit identification of its individual membership. Our criminal justice colleagues—"out there" and "off campus"—made massive contributions to our study. Clearly, they completed a survey, but they also corresponded with us, made suggestions, identified problems, dreamed of and prepared solutions, and always demonstrated concern for their fellowman. They are located nationwide—correctional specialists in the Regional Offices of LEAA and in the State Planning Agencies, in the probation organizations themselves, and in the judicial system, correctional institutions, paroling authorities and parole agencies. We owe them a debt of gratitude; we know that they share with us the hope that this prescriptive package serves to make the justice system more just.

CHAPTER I. INTRODUCTION

The Law Enforcement Assistance Administration, through its National Institute of Law Enforcement and Criminal Justice, authorized this Prescriptive Package so that there could be a clear focus upon "the kinds and quantity of information needed in a presentence report to insure more equitable and correctionally appropriate dispositions." The emphasis was to be placed upon adult presentence reports and although the "information requirements" were to be central to the prescriptive package, other related aspects of the presentence process and/or probation in general were left open for examination and comment.

The first probation law in the United States was enacted in Massachusetts in 1878 and enabled the City of Boston to appoint a paid probation officer for the courts of criminal jurisdiction. Edward H. Savage, former Boston Chief of Police, became the first statutory probation officer with a mandate to comply with legislation prescribing the duties of probation officers. These duties included court attendance, *investigating cases of persons charged with or convicted of crimes or misdemeanors, making recommendations to the courts with regard to the advisability of using probation,* submitting periodic reports to the chief of police, visiting probationers, and "rendering of such assistance and encouragement (to probationers) as will tend to prevent their again offending."[1] Clearly, the presentence function is part of the probation legacy.

Over the years, developments in the field of probation have evolved in a seemingly random and spurious manner rather than in calculated, planned and deliberate stages. Practice, rather than design or legislation, appears to be the dominant change stimulus and this seems true regardless of whether probation is defined as a sentence, as an organization, or as a process—distinctions made by the American Correctional Association.[2] Indeed, the practice of probation precedes probation legislation by almost forty years. Probation is generally credited to John Augustus who, in 1841, attended a police court in Boston and posted bail for a man charged with public drunkenness. Augustus reappeared in court three weeks later with the offender who showed "convincing" signs of reform; the judge, instead of imposing the usual penalty of imprisonment in the house of corrections, ordered payment of a nominal fine of one cent.[3]

Even the legal antecedents of probation generally were not the product of deliberate legislative or judicial acts. For centuries, a social policy of general deterrence and retribution prescribed punitive and repressive techniques for dealing with crime. Over the last century, however, trends in policy have consistently encouraged movement toward approaches which focus on both the prevention of criminality and the uniqueness and dignity of individual offenders. A number of judicial expedients acted as precursors to probation: the right of sanctuary, benefit of clergy, judicial reprieve, recognizance or binding-over, provisional release on bail and the provisional filing of cases.[4] Thus, history records that probation, emerging from various methods for conditional suspension of punishment, was a reaction to harsh and repressive criminal law, including capital and corporal punishment and their almost mechanical and inhumane application.

The point to be emphasized here in not historical, but rather the manner in which probation has responded to changing attitudes and policies regarding offenders. There are changes yet to come to probation; these changes will be generated from a variety of sources both within and outside the criminal justice system. To the extent that probation's history of reactive evolution is repeated, the changes will be neither dramatic nor newsworthy; rather, they will be subtle.

A significant change in probation practice appears to be occurring at this time and warrants brief comment. Perhaps the major trend of the 1970's in probation is the requirement for and acceptance of increased probation services prior to adjudication. To the extent these preadjudication

services continue, the impact on probation will be marked. Indeed, preadjudication services could evolve into the third basic duty of probation—adding to presentence investigations and supervision of offenders in the community after adjudication.

The diverse preadjudication services currently being performed are identified by a variety of names, with different names sometimes applied to identical activities. Generally, these new services include diversion or deferred prosecution, informal probation, preadjudication release on bond, personal recognizance, and the like. Frequently, these new services are being provided by the probation organization, not only because the organization already exists, but also because it may be uniquely qualified by virtue of its traditional roles of presentence investigation and supervision in the community. These additional responsibilities—to the extent they are absorbed by probation—will impact current organizational structures. Clearly, there will be demands for more resources to meet the demands for service. But it is also likely that the traditional presentence investigation will originate prior to adjudication and that traditional supervision service may also be advanced in the criminal justice system to a time almost immediately after arrest.

To be more explicit, preadjudication release investigations will early-on generate data to be used later for inclusion in presentence reports; in some imprecise way, this will impact the nature of the traditional presentence investigation. The presentence investigation will seemingly commence with the preadjudication release investigation. Concurrently, preadjudication supervision may provide a continuity of supervision from arrest through discharge from probation for those offenders granted probation.

Further speculation about the addition of preadjudication services to the basic probation mission is not required here. It is important to emphasize, however, that additions, modifications, or deletions in the basic organization mission ought to be by design, not chance, and that the probation organizations affected should plan for these changes and become proactive rather than reactive.

Organization of the Package

This Prescriptive Package is arranged over a continuum of time. Chapter II provides a brief history of the presentence investigation and report from 1910 through this date; it describes where we have been. Chapter II also summarizes recent prescriptions in the United States. Chapter III, based on a nationwide survey of probation practice, portrays both current format and content of presentence reports. Chapters IV and V, the prescriptions, have a future orientation; Chapter IV focusing upon presentence report format and content and Chapter V addressing related issues about presentence investigations and reports. Finally, Chapter VI summarizes the Prescriptive Package.

CHAPTER II. THE HISTORICAL PERSPECTIVE AND RECENT PRESCRIPTIONS

A. Historical Perspective 1910–1960

The two traditional functions of the probation officer are the conduct of presentence investigations and supervision of offenders on probation in the community. The first function—preparation of a detailed report based upon a complete investigation—is a critical element in judicial and correctional administration. The investigation, normally initiated immediately following a finding or admission of guilt, and the formal written report to the court may serve several important functions. Initially, the report aids the court in determining the appropriate sentence. It may also assist correctional institution personnel in their classification and program activities in the event the offender is sentenced to an institution, and similarly assist the paroling authority when parole is under consideration. In addition, the report is the initial source of information utilized by the probation officer in his supervision of offenders placed on probation. It further may be used by other treatment agencies and by appellate courts in their review of sentencing practice. Finally, the report may serve as a source of relevant information for systematic research about convicted offenders.

The development and formulation of presentence or probation reports utilized in the United States today can be traced to 1910. In that year, William Healy, Director of the Juvenile Psychopathic Institute in Chicago, outlined the need for "individual study of the young criminal"; he pointed to "the importance of a thorough-going study of the individual case at the period of life when something, if ever, can be done in the way of individual modification." Healy noted, "The case consequently must require careful, individual diagnosis before the rational treatment can be instituted which is really adapted to its needs." [5] Healy's observations are directly related to the purposes of the modern presentence report. For example, the Administrative Office of the United States Courts, in commenting on the presentence report model utilized in United States District Courts, observed in 1965:

> The primary objective of the presentence report is to focus light on the character and personality of the defendent, to offer insight into his problems and needs, to help understand the world in which he lives, to learn about his relationships with people, and to discover those salient factors that underlie his specific offense and his conduct in general.
>
> Probation cannot succeed unless care is exercised in selecting those who are to receive its benefits. The presentence report is an essential aid in this selective process. [6]

B. Healy: Classification of Offenders (1915)

Healy's efforts toward classification of offenders in 1910 and 1913 and his 1915 text, *The Individual Delinquent* (sub-title: A Textbook of Diagnosis and Prognosis for All Concerned in Understanding Offenders) influenced the development of earlier models of presentence reports. He held "the deepest conviction that only through logical scientific study of the individual can there be any reasonable expectation of amendment in most delinquent careers. Those who have to do with the judging and treatment of offenders must reckon with such methods of fact as we present." Healy's system of data collection covered eleven areas: family history, developmental history, environment, mental and moral development, anthropometry, medical examination, psychological data, delinquency record, a diagnostic and prognostic summary, as well as "follow up" and "subsidiary" records.[7]

While Healy was concerned with the development of a scientific approach to delinquency, Bernard Flexner and Roger Baldwin, in a text prepared for the National Probation Association, were focusing on the use of data as gathered or suggested by Healy to improve the probation officer's performance in court. They observed in 1914:

> Probation officers, as a rule, fail to distinguish between facts and conclusions. A large portion of the evidence given by probation officers in juvenile courts is a mass of opinions and conclusions. The only way to avoid testimony so manifestly unfair and absolutely valueless, is to secure the full facts in advance as accurately as possible and put them in writing.[8]

C. Richmond: Social Diagnosis (1917)

Mary E. Richmond's 1917 text, addressed mainly to social workers, indicated a need for "social diagnosis," defined as "the attempt to make as exact a definition as possible of the situation and personality of a human being in some social need—of his situation and personality, that is, in relation to the other human beings upon whom he in any way depends or who depend upon him, and in relation also to the social institutions of his community." The text cautioned the "worker to distinguish in the evidence collected what is relatively important for successful treatment from what is relatively unimportant." Miss Richmond's system of data collection included general social data; physical and mental conditions; industrial history; financial situation; education; religious affiliation; recreation; environment; relations, if any, with social agencies; and basis for treatment.[9]

D. Cooley: Application of Diagnostic Methods (1918)

In 1918, Edwin J. Cooley, Chief Probation Officer of the Court of General Sessions at New York City observed:

> One of the current developments in our Probation work is the realization that there is a definite methodology in the making of a comprehensive diagnosis of a delinquent. Miss Mary E. Richmond's book *Social Diagnosis*, which, by the way, should be in the hands of every probation officer, is a very definite step in the development of social case technique.

Two years later, Cooley extended his remarks and pointed to the need for a "scientific probation technique, drawing its inspiration from the realization of the significance of the task, obtaining its information in the vast laboratory of life as a whole." Cooley was given an opportunity to implement his ideas when, in 1925, he was appointed director of the Catholic Charities Probation Bureau in New York City. In that year, Cardinal Hays of New York, "after examining various methods proposed for the solution of the crime problem . . . came to the conclusion that in the probation system, with its study of the individual and its planning of appropriate supervision, society has developed an agency of great potential." Cooley divided his college-trained probation staff into two groups—the Investigative Corps and Supervision Corps—to insure that all "officers of each give full time to their respective duties of diagnosis and treatment." In his methodology of diagnosis, Cooley observed:

> The probation plan of *social diagnosis* should consider the legal history of the offender, the essential elements of his environment, a study of his developmental history, personality and behavior, his capacities and potentialities, and the etiology of the delinquency.
>
> The study of the *legal history* of the offender should comprise his previous court record, analysis of the offense, and the story and attitude of the complainant. A fingerprint system should be established and utilized to ascertain the criminal record of the delinquent.
>
> The diagnosis of the *social history* of the delinquent should include the personal history, education and early life, family and neighborhood conditions, employment history, recreation, habits and associates, religious observances and training, and the mitigating or aggravating circumstances of the offense.
>
> The diagnosis of the *personality* of the defendant should consider the following factors: heredity, physical conditions, mentality (capacity, traits, and interests), emotions, sentiments and beliefs, character and conduct, and manner and appearance.[10]

Since the pioneer classification efforts of Healy and application efforts of Cooley, presentence report usage has been extended, improved, and professionalized by leaders in the field of corrections. Support for probation services emerged from the campus: in 1938, for example, the distinguished criminologist Frank Tannenbaum articulated the need for proper selection of subjects for probation and observed that the "decision in each case must therefore depend upon the scrutiny of the various elements of the case itself."[11] The 1942 classic by Helen Pigeon for the National Probation Association, *Probation and Parole in Theory and Practice,*[12] served to mature the nationally growing practice of probation (juvenile probation services were available in all states by 1925; adult probation services by 1956). Publication 101 of the Administrative Office of the United States Courts, *The Presentence Investigation Report,*[13] authored by Richard A. Chappell and Victor H. Evjen, in 1943, contained the first Federal guidelines for report format and content. Harry Elmer Barnes and Negley K. Teeters, in their massive 1943 *New Horizons in Criminology,* argued simply that "probation is the hope of the future" and that adequate diagnosis is mandated for successful probation.[14]

In 1946, the first edition of the standard-setting *Manual of Correctional Standards* was published by the American Correctional Association.[15] A 1949 decision of the United States Supreme Court to support the presentence investigation and report added more impetus to presentence practice.[16] In

the early 1050's, a series of correctionally-oriented textbooks appeared. These books argued for professional probation which included adequate presentence and diagnostic services. Prominent among the textbooks were *Contemporary Correction* by Paul Tappan and *Social Treatment in Probation and Delinquency* by Pauline Young.[17]

E. Recent History 1960—Present

In 1960, Paul Keve, the influential probation administrator, published *The Probation Officer Investigates* (sub-title: A Guide to the Presentence Report), an articulate statement of the presentence investigation and report process.[18] By 1965, the Administrative Office of the United States Courts published *The Presentence Investigation Report,* a monograph which seemingly set the standard for presentence reports nationwide at all levels of probation service.[19] The Federal model of 1965, a sophisticated example of a presentence report, was organized into 16 sections. The first section, Identifying Information, was on a form. The remaining section headings were:

Offense
Defendant's Version of Offense
Prior Record
Family History
Marital History
Home and Neighborhood
Education
Religion
Interests and Leisure Time Activity
Health
Employment
Military Service
Financial Condition
Evaluative Summary
Recommendation

Each of these sections included "essential data" and "optional data." Essential data were "essential" from the Federal Probation System perspective and were required in all Federal reports; optional data were those which were to be included in specific cases, if warranted. An example of essential data under the Military Service section is type and date of discharge; an example of optional data, foreign service, combat experience, decorations and citations.

With publication of the Federal monograph, it appeared that the sanctity of the presentence report was assured in a configuration not dissimilar from that prescribed in the monograph. This was not to be the case, however. In the early 1960's, the National Institute of Mental Health funded a supervision-oriented study of Federal Probation in the Northern District of California.[20] Part of that study examined presentence reports, the sentencing recommendations of Federal Probation Officers to the Federal Courts in San Francisco, and the sentences imposed by the courts. Among the published findings [21] were data which suggested that a) much of the information collected in the presentence investigation was extraneous to the officer's decisions as reflected in his recommendation to the court and to the judge in imposing a sentence on the convicted offender; b) the probation officer and judge use similar data in making different kinds of decision; c) some data were dominant as aids to decision-making: notably current offense, prior record, and measures/indicators of stability; and d) the amount and type of data to be collected should be related to the sentencing alternatives available. These report findings remained dormant until 1967.

The first significant public discord about the presentence report appeared in 1967 in the *Task Force Report: Corrections* of the President's Commission on Law Enforcement and Administration of Justice. The Report noted that although there was little argument that the presentence report had played an increasingly greater and more significant role in the administration of justice, "the high manpower levels required to complete reports have caused some authorities to raise questions as to the need for the kind and quantity of information that is typically gathered and presented." [22]

The Task Force also commented:

> In order to evaluate the information needed in a presentence report, it is important first to take account of the variety of decisions that depend upon it. Besides helping the judge to decide between probation and prison, it also assists him to fix the length and conditions of probation or the term of imprisonment. Beyond these functions, the report is usually the major information source in all significant decisions that follow—in probation programing or institutional handling, in eventual parole decision and supervision, and in any probation and parole revocation.[23]

Finally, it was noted:

> Experimentation with new and simpler forms of presentence investigation is important for reasons beyond the conservation of scarce resources of probation offices. Presentence reports in many cases have come to include a great deal of material of doubtful relevance to disposition in most cases. The terminology and approach of reports vary widely with the training and outlook of the persons preparing them. The orientation of many probation officers is often reflected in, for example, attempts to provide in all presentence reports comprehensive analyses of offenders, including extensive descriptions of their childhood experiences. In many cases this kind of information is of marginal

relevance to the kinds of correctional treatment actually available or called for. Not only is preparation time-consuming, but its inclusion may confuse decision-making.[24]

The Corrections Task Force, even with its short commentary on presentence reports, was surfacing latent issues. In sum, the Task Force was concerned about the allocation of probation resources to presentence work. It noted that because "presentence investigations usually take precedence, the (probation) officer may have so little time left that 'supervision' may take the form of receiving monthly reports filed by probationers."[25] Given additional infringements on probation resources by increasing demands for preadjudication services, the 1967 commentary was a prophecy which has even more relevance a decade later.

Moreover, the Task Force was addressing a bottom line presentence issue: what decisions are dependent upon presentence investigations and reports and what data are required to make those decisions? The Task Force also suggested an examination of the relationship between quantity of data and decision-options available to decision makers; clearly, there was an inference that not all data are equally important for making the decision.

These Task Force statements generated a series of experimental shorter presentence reports. Among the first was a 1969 Washington State alternative format.[26] Three years later, 1972, the (Federal) Judicial Conference Committee on the Administration of the Probation System agreed "that there was a need for a format for a shorter presentence investigation report that would be acceptable not only to the courts but also to probation officers, the Bureau of Prisons, and Board of Parole." [27] A monograph, *The Selective Presentence Investigation Report,* was prepared by the Administrative Office of the United States Courts and approved by the Judicial Committee. This document was "recommended to all (Federal) probation officers as a supplement to the earlier (1965) format outlined in *The Presentence Investigation Report.*" [28]

In 1973, almost cuncurrently with the approval of the second Federal monograph, the National Advisory Commission on Criminal Justice Standards and Goals (NAC) released its eight volume report. Although focusing generally on the criminal justice system and the communities served by the system, the several Commission Task Forces addressed needs within the various components of the criminal justice system. Although the many NAC standards and goals may not be mandated for implementation by criminal justice agencies, they do play an important role in terms of setting directions for the future. Within the NAC Corrections Report, for example, there is a recommendation that "a presentence report should be presented to the court in every case where there is a potential sentencing disposition involving incarceration and in all cases involving felonies or minors." [29]

Even without a mandate authority, the NAC reports were the most significant criminal justice publications of the early 1970's. By the late 1970's, another important series of publications—targeted exclusively on corrections—is scheduled for publication. These are the more explicit standards established by the Commission on Accreditation for Corrections (CAC), a project initially sponsored by the American Correctional Association for the singular purpose of certifying that correctional agencies and systems meet standards for public protection, effective performance and efficient operations.[30] One of the CAC Task Forces, Formal Community Services, addressed the presentence report and investigation. The recommendations of the CAC and the NAC serve as the foundations for the prescriptions which appear in Chapters Four and Five.

It is important to recognize that the past, present and future are inseparably connected—in fact, as well as theory. In terms of the presentence report, it has been noted above that a) the Task Force Report on Corrections by the President's 1967 Commission discussed "the kind and quantity of information" [31] required in presentence reports; b) the NAC used identical language—"the kind and quantity of information" [32] needed to insure appropriate decisions; c) the National Institute of Law Enforcement and Criminal Justice, in contracting for this Prescriptive Package used the same words; and d) the activities of the CAC were targeted precisely on the same issue. In short, there is a continuing and growing interest in the presentence report: this Prescriptive Package is not of isolated or unique concern to a single agency at a single point in time.

F. Prescriptions 1942—Present

During the past 35 years, a variety of organizations and individuals—some connected directly with corrections and others more generally with the overall criminal justice system—have provided commentary and established correctional standards and/or model legislation. These standards and

models of legislation, clearly of historical significance, perform an important function as beacons or signposts to the future. *Those marked with an asterisk are detailed in Appendix A.*

In 1942, Helen Pigeon prepared one of the earliest and most detailed prescriptions for presentence investigations and reports. In her Study Manual for the National Probation Association, she noted that:

> In addition to vital statistics relating to age, place of birth and citizenship, the general fields of inquiry may be divided into the following (nine) categories:
>
> Prenatal and Developmental History
> The Family Group
> The Home
> School History
> Employment History
> Use of Leisure Time
> Marital Situation
> History of Delinquency or Crime
> The Present Offense[33]

In each one of these "fields of inquiry," she suggested specific data to be collected. For example, the prescription for information about prenatal and development history included:

> Family history with reference to disease, insanity, feeblemindedness
>
> The prenatal history as to health of mother, accidents, injuries at birth
>
> Early childhood, as to physical and mental development, nutrition, diseases, habits of eating, sleeping and play; attitude toward family
>
> History of misconduct, early manifestations, temper tantrums, bad habits; overt delinquencies and their attendant circumstances
>
> Methods of dealing with child; encouragement of interests, provision of outlets, satisfaction of sex curiosity; disciplinary measures, whipping, nagging, shaming, depriving of pleasures; the effect of these measures on personality and behavior[34]

It is signifiant to note that with the exception of the three Federal monographs, *The Presentence Investigation Report* (1943 and 1965) and *The Selective Presentence Investigation Report* (1974), all operationally directed toward the Federal probation system, there has not been a nationally sponsored, detailed description of presentence requirements. Rather, between Pigeon's 1942 outline and the 1974 Federal monograph, model legislation and proposed standards have been general in nature. Much of the diversity in practice described in Chapter Three, as well as many of the similarities—ironically, are a product of this phenomenon.

The American Correctional Association published its first *Manual of Correctional Standards,* a pioneering work, in 1946 and updated editions in 1954, 1959 and 1966. This influential organization and its 1966 *Manual* set forth a number of standards for the presentence investigation and report, noting that these standards were one of ten "essential elements" in an adult probation system:

> *The Presentence Investigation and Report.* A properly conducted presentence investigation provides the opportunity to study the defendant, his motivations and capacity for more orderly living, to consider a treatment plan and formulate a recommendation to the court.
>
> The investigation should cover all aspects of the defendant's life history. Information should be obtained from the defendant, his family, employer, schools, law enforcement agencies, courts, correctional agencies, friends, clergy, social agencies—all sources having pertinent information about the defendant.
>
> The report should contain only those facts and information that contribute to the purpose of this report. The information in the report should be presented in such a way that the relationship and significance of the material is apparent.
>
> Though the formats for presentence reports vary, there are two principles applicable to all: (1) information identifying the defendant and his offense and (2) topical classification of material in the narrative portion of the report.[35]

In 1955, the National Council on Crime and Delinquency published the Standard Probation and Parole Act. The following criteria were established for the (presentence) investigation:

> No defendant convicted of a crime the punishment for which may include imprisonment for more than one year shall be sentenced, or otherwise disposed of, before a written report of investigation by a probation officer is presented to and considered by the court. The court may, in its discretion, order a presentence investigation for a defendant convicted of any lesser crime or offense. Whenever an investigation is required, the probation officer shall promptly inquire into the circumstances of the offense; the attitude of the complainant or victim, and of the victim's immediate family, where possible, in cases of homicide; and the criminal record, social history, and present condition of the defendant. All local and state police agencies shall furnish to the probation officer such criminal records as the probation officer may request. Where in the opinion of the court on the investigating authority it is desirable, the investigation shall include a physical and mental examination of the defendant. If a defendant is committed to any institution the investigating agency shall send a report of its investigation to the institution at the time of commitment.[36]

The presentence investigation and report were examined by two Task Forces for the President's Commission on Law Enforcement and Administration of Justice. The Task Force on Administration of Justice noted that "it is essential that there be systematic procedures for providing relevant information about the offense and the offender to the sentencing judge."[37] It then described several procedures to satisfy the information needs for sentencing, including the presentence investigation and

report, the sentencing hearing, and the diagnostic commitment. The complete Task Force text relating to the presentence investigation and report is contained in Appendix A. The Task Force on Corrections devoted several pages of text to presentence process and diagnosis, arguing persuasively for experimentation with new and simpler forms of presentence investigation and report.[38] The commentary of the Corrections Task Force also is contained in Appendix A.

The President's Commission itself recommended:

All courts, felony and misdemeanor, should have probation services. Standards for the recruitment and training of probation officers should be set by the States, and the funds necessary to implement this recommendation should be provided by the States to those local courts that cannot finance probation services for themselves. All courts should require presentence reports for all offenders, whether those reports result from full field investigations by probation officers or, in the case of minor offenders, from the use of short forms.[39]

The Commission further recommended:

In the absence of compelling reasons for nondisclosure of special information, the defendant and his counsel should be permitted to examine the entire presentence report.[40]

In 1970, the American Correctional Association adopted the following general principle relating to investigation:

Principle XIV. Correctional agencies and institutions can best achieve their objectives by providing resources for the complete study and evaluation of the offender. Decisions determining the treatment design for the offender should be based on a full investigation of the social and personality factors. These investigations may be made at different levels, so long as the essential information is available at the proper step in the decision-making process.[41]

In the same year (1970), the American Bar Association established standards relating to the presentence report. In excerpt form:

2.1 Availability and use. (a) All courts trying criminal cases should be supplied with the resources and supporting staff to permit a presentence investigation and a written report of its results in every case. (b) The court should explicitly be authorized by statute to call for such an investigation and report in every case.

2.2 Purpose of report. The primary purpose of the presentence report is to provide the sentencing court with succinct and precise information upon which to base a rational sentencing decision. Potential use of the report by other agencies in the correctional process should be recognized as a factor in determining the content and length of the report, but should be subordinated to its primary purpose.

2.3 Content, scope and length of report. Presentence reports should be flexible in format, reflecting differences in the background of different offenders and making the best use of available resources and probation department capabilities. Each probation department should develop gradations of reports. . .[42]

In 1972, the National Council on Crime and Delinquency revised its Model Sentencing Act and provided the following commentary on the presentence investigation:

After a defendant is convicted of a crime the sentence for which may include commitment for more than six months. . . a written report of investigation by the probation officer shall be presented to and considered by the judge before he imposes the sentence or probation without conviction.

The judge may, in his discretion, order a presentence investigation for a defendant convicted of any lesser crime or offense. The court shall make rules as to the exercise of such discretion.

Whenever an investigation is required, the probation officer shall promptly inquire into the characteristics, circumstances, needs, and potentialities of the defendant; his criminal record and social history; the circumstances of the offense, the time the defendant has been in detention; and the harm to the victim, his immediate family, and the community.

The presentence investigation and any supporting reports, including diagnostic reports and the probation officer's recommendation where the judge has required or allowed a recommendation to be made, shall be made available to the attorney for the state and to the defendant and his attorney in advance of the hearing on the sentence, provided that, pursuant to rules of the court the identity of the informant or information leading to his identity may be withheld if his security or the security of a vital family relationship would be endangered by the disclosure.[43]

The 1973 publications of the National Advisory Commission on Criminal Justice Standards and Goals provided five presentence standards in its volume on Corrections. The standards were:

Standard 5.14

Requirements for Presentence Report and Content Specification

Sentencing courts immediately should develop standards for determining when a presentence report should be required and the kind and quantity of information needed to insure more equitable and correctionally appropriate dispositions.[44]

Standard 5.15

Preparation of Presentence Report Prior to Adjudication

Sentencing courts immediately should develop guidelines as to the preparation of presentence reports prior to adjudication, in order to prevent possible prejudice to the defendant's case and to avoid undue incarceration prior to sentencing.[45]

Standard 5.16

Disclosure of Presentence Report

Sentencing courts immediately should adopt a procedure to inform the defendant of the basis for his sentence and afford him the opportunity to challenge it.[46]

Standard 5.17

Sentencing Hearing-Rights of Defendant

Sentencing courts should adopt immediately the practice of holding a hearing prior to imposition of sentence and should develop guidelines for such hearing.[47]

Standard 16.10

Presentence Reports

Each State should enact by 1975 legislation authorizing a presentence investigation in all cases and requiring it:

1. In all felonies.
2. In all cases where the offender is a minor.
3. As a prerequisite to a sentence of confinement in any case.[48]

G. Summary

These and other prescriptions—and particularly those articulated since the President's Commission reports of 1967—contain several common elements. There is consensus that presentence reports must be related directly to decision-making and recognition that a diversity of decision-makers within the criminal justice system have more or less use for presentence report data. These decision-makers include sentencing judges, supervising probation officers, institution classification personnel, the paroling authority, parole officers, and researchers among them. It is increasingly clear that presentence reports must serve these many decision-makers and be cognizant of the decision alternatives available to these decision-makers. Current thought is that above all else presentence data *must* enhance the selection of the most appropriate alternative available to the sentencing court.

Implicitly, these varied prescriptions recognize that decisions must be based upon data which are factual, verified, and carefully analyzed. Explicitly, there is growing recognition that different jurisdictions have different data requirements and therefore that flexibility in both presentence report format and content is appropriate. But even as the argument is advanced for flexibility, so too is the argument for consistency. While it is clear that some cases (whether classified by offense, offender or other categorization) require more or less data than other cases, it is equally clear that our concept of justice mandates that decisions be objective rather than based upon sentimentality and tradition. Robert O. Dawson, in his text *Sentencing*, prepared for the American Bar Foundation, writes about the

> * * * imponderables surrounding the use of discretion in the correctional process. This exercise of judgment is primarily responsible for such basic determinations as length of sentence, eligibility for and revocation of probation and parole, and ultimately, the success for failure of the whole criminal justice system. Nowhere else within that system is there to be found the degree of latitude and flexibility that exists in the correctional process, and it is that traditional 'freedom' which is coming under increasing attack. . .[49]

Clearly, the availability of adequate and relevant data to decision-makers should improve the exercise of discretion, i.e., the selection of the most appropriate alternative.

CHAPTER III. CURRENT STATUS: PRESENTENCE PRACTICE

In order to obtain data on the current status of presentence investigation and report practice in the United States, a written survey soliciting such data was conducted in mid-1976*. The identification and location of some 735 probation organizations were obtained from two sources: the 1975–76 edition of the American Correctional Association's *Juvenile and Adult Correctional Departments, Institutions, Agencies and Paroling Authorities* and the 50 LEAA publications, *Criminal Justice Agencies in (State).*

Included among the 735 agencies were those identified as probation (and sometimes probation *and* parole) departments; commissions; and boards or agencies operated by a state or local government, including those operated by court systems. Also included was the somewhat unique category of state-local agencies which served more than one county. Excluded from the survey were agencies which provided probation service only on a contractual basis and agencies identified specifically as providing probation services only to juveniles. The distribution of the 735 agencies:

state	40
state-local	138
local	557
total	735

It is important to note that many of the agencies identified as "local" were, in fact, local or regional offices of a state agency rather than independent agencies. This accounts for the significant fallout in responses indicated below. In numerous cases, the parent state agency responded for all of its subordinate units, many of which were counted as among the 557 "local" agencies.

* See Appendix B for a copy of the letter requesting current presentence investigation and report data.

A total of 147 agencies replied to the survey letter with responses ranging from a single sentence written across the face of the survey letter to a sizeable assortment of agency statements, policies, standard operating procedures, manuals, training aids and similar materials. A total of 123 of these responses included a sample adult presentence report (two provided postsentence reports); of these, a total of 105 contained a "cover sheet" or "face sheet" with basic information about the offender and the offense.

Geographically, the largest number of responses were from California with 23, Indiana and Texas with 10, New Jersey and Ohio with 9, and Illinois and New York with 8 each. Pennsylvania, Arizona, Massachusetts, Kansas and Colorado provided 7, 5, 4, 3 and 3 responses respectively. The states or jurisdictions from which there was a single response included:

Alabama	Louisiana	Oregon
Alaska	Maryland	South Carolina
District of Columbia	Michigan	South Dakota
Georgia	Minnesota	Utah
Gaum	Missouri	Virginia
Hawaii	Nevada	Washington
Idaho	New Mexico	Wisconsin
Kentucky	North Carolina	Wyoming

Again, it must be noted that many of the single responses from state agencies provided data for all probation offices, local and regional, within the total jurisdiction. In sum, responses to the survey were received from 42 states, the District of Columbia and Guam. Our judgment is that these responses in fact represent a reasonable portrait of presentence investigation and report practice across the United States in 1976.

A. The Cover Sheet

Perhaps the most striking finding from the survey is the diversity of data which comprise the presentence report cover sheet, a page normally utilized for "identifying data" of one sort or another. A total of 118 distinct data elements were identified and tabulated from the 105 cover sheets analyzed. Table 1 provides a listing of 55 of the data elements which were found on six or more of the 105 cover sheets. These have been arranged according to the percentage frequency of occurrence. Only 17 of these pieces of information appeared on more than 50 percent of the cover sheets and only one item, the name of the defendant, appeared on all 105.

TABLE 1: COVER SHEET IDENTIFYING INFORMATION

(Arranged by frequency of six or more occurrences: *N=105)*

Information Element	*Number of Occurrences*	*Percent*
Name of Defendant	105	100.0
Name of Jurisdiction or Agency	104	99.1
Offense	95	90.5
Name of Defense Counsel	94	89.5
Docket Number	90	85.7
Date of Birth	87	82.9
Defendant's Address	82	78.1
Name of Sentencing Judge	78	74.3
Defendant's Age	77	73.3
Plea	67	63.8
Date of the Report	65	61.9
Sex	64	61.1
Custody or Detention	58	55.2
Verdict	57	54.3
Date of Disposition	57	54.3
Marital Status	54	51.4
Other Identifying Numbers*	54	51.4
Social Security Number	51	48.6
Name of Prosecuting Attorney	51	48.6
Birthplace	51	48.6
Race	49	46.7
Name of Probation Officer	49	46.7
Other Names Used, Alias, AKA	47	44.8
Codefendants	47	44.8
Dependents	42	40.0
Education	39	37.1
Physical Description	37	35.2
Defendant's Telephone Number	37	35.2
Date of Arrest	35	33.3
Legal Residence	35	33.3
Disposition	35	33.3
Citizenship	33	31.4
FBI Number	31	29.5
Occupation or Trade	31	29.5
Prior Record	30	28.6
Detainers or Charges Pending	30	28.6
Date of Offense	24	22.9
Employer Name and Address	22	21.0
Substance Use or Abuse	19	18.1
Penalty for Convicted Offense	18	17.2
Relatives	17	16.2
Date Referred to Probation	16	15.2
Date Complaint Filed or Certified	14	13.3
Military History	13	12.4
Plea Bargain Information	12	11.4
Salary or Income Information	12	11.4
Living with	11	10.5
Religion	10	9.5
Health	9	8.6
Restitution	9	8.6
Trial Date, Date Convicted, Adjudication Date	8	7.6
Arresting Agency or Officer	8	7.6
Force, Weapons or Violence	6	5.7
Sources of Information and Interviews	6	5.7
Legal Summary, Briefs, Transcripts	6	5.7

*Other than FBI and Social Security Numbers

Some of the data elements on the cover sheet were duplicated in the narrative portion of the presentence report itself, including such traditional narrative sections as prior criminal record, education and military service. Several of these data elements reflect current concerns in American society such as "substance use or abuse." Other data are suggestive of recent changes in the criminal justice system such as "plea bargaining" information. A variety of these data elements portray the justice system response to the offender rather than the offender himself. These include the names of the arresting officer, judge, prosecutor, defense counsel and probation officer and the dates of such specific occurrences as arrest, filing of complaints, custody, trial and sentencing. It is important to note that it was the exceptional report which indicated whether data on the cover sheet or in the report itself had been verified.

For the record, Table 2 identifies the 63 additional data elements found five or less times on the 105 cover sheets examined. These 63 have been arranged into nine broad, but arbitrary classes of data to facilitate analysis.

TABLE 2: OTHER COVER SHEET IDENTIFYING INFORMATION

(Arranged by frequency of five or fewer occurrences: *N* = 105: arbitrary subject headings)

Subject Area	*Number of Occurrences*	*Percent*
Legal or Procedural Data		
Date of Plea or Preliminary Hearing	5	4.8
Youthful Offender Status	4	3.8
Certificate of Relief from Disabilities	4	3.8
Place of Arrest	3	2.9
Date Report Due or Approved	3	2.9
Name of Complainant	3	2.9
Place of Offense	2	1.9
Legal or Procedural Data		
Registerable Offense	1	*
Booking Agency	1	*
Alternative Sentences	1	*
Eligible for Probation w/o Unusual Finding	1	*

TABLE 2: OTHER COVER SHEET IDENTIFYING INFORMATION—Continued

(Arranged by frequency of five or fewer occurrences: N = 105: arbitrary subject headings)

Offenses to be Dismissed	1	*
Offender Class	1	*
Investigative Officer's Comments Re: Offense	1	*
Offense Related Data		
Codefendant's Disposition	4	3.8
Names of Crime Partners	1	*
Names of Codefendants	1	*
Victim	1	*
Number of Victims	1	*
Names and Addresses of Victims	1	*
Victim Acquainted w/Offender	1	*
Offender Personal Data		
Previous Addresses	3	2.9
Photograph of Defendant	2	1.9
Number of Marriages	2	1.9
Time in Area	1	*
Adjustment While in Jail	1	*
Length of Marriage	1	*
Spouse's Name	1	*
Number of Siblings	1	*
Defendant Raised by	1	*
Type of Dwelling and Number of Rooms	1	*
Sanitary and Moral Conditions of Home	1	*
Rent	1	*
Residence Plans	1	*
Persons Interested in Defendant's Welfare	1	*
Educational or Vocational Data		
Union Membership	3	2.9
Age Left School	2	1.9
Highest Grade Completed	1	*
I.Q.	1	*
Illiterate	1	*
Special Training	1	*
Length of Time Employed	1	*
Job Readiness	1	*
Financial Data		
Financial Status	2	1.9
Debts	2	1.9
Public Assistance	2	1.9
Child Support Order and Amount	2	1.9
Defense Attorney's Fee	1	*
Motor Vehicle Data		
Automobile Description	3	2.9
Military Data		
Draft Board Number	1	*
Kind of Military Discharge	1	*
Physical or Mental Problem Areas		
Abnormal Behavior	2	1.9
Problem Areas	1	*
Method of Handling Stress	1	*
Medical or Behavior Problems	1	*
Problems of Adjustment	1	*
Physical Disability	1	*
Hospitalization for Addiction	1	*
Recommendation or Prognosis		
Probation Officer's Recommendation	3	2.9
Prognosis	3	2.9
General Informative Findings	3	2.9
Other Pertinent Information	1	*

*Less than 1%

B. The Presentence Report

Because narrative section headings in presentence reports are broader and less discrete than cover sheet data, a casual glance would suggest that the enormous range of data recorded on the cover sheets is not repeated in the reports themselves. Although the number of narrative section headings is clearly less than cover sheet items, a wide variety of headings were encountered in the 123 reports examined. A review of the section narratives permitted the identification of some 26 arbitrary, but rather distinct headings under which all section titles encountered in the survey generally could be grouped. These 26 headings appear in Table 3 below, arranged by frequency of occurrence.

TABLE 3: PRESENTENCE REPORT CONTENT

(Arranged by frequency of occurrence of section headings: $N = 123$)

Section Heading	*Number of Occurrences*	*Percent*
Offense: Official Version	113	91.9
Social and Family History	111	90.2
Prior Record	106	86.2
Evaluative Summary	106	86.2
Employment	105	85.4
Education	103	83.7
Offense: Defendant's Version	97	78.9
Health: Physical	97	78.9
Marital History	91	74.0
Military Service	89	72.4
Financial Assets and Obligations	84	68.3
Health: Mental and Emotional	83	67.5
Recommendation	79	64.2
Religion	60	48.8
Substance Use or Abuse	52	42.3
Home and Neighborhood	49	39.8
Interests and Leisure Time Activities	48	39.0
Collateral Contacts or References	42	34.2
Treatment Plan	21	17.1
Available Resources	19	15.5
Offense: Statement of Arresting Officer or Complainant	17	13.8
Offense: Statement of Victim(s)	16	13.0
Character Traits, Behavioral Adjustment, Socialization	16	13.0
Offense: Statement of Codefendants	10	8.1
Present Attitude Toward Offense	10	8.1
Offense: Statement of Witnesses	4	3.3

Surprisingly, not one of these 26 sections was found in every report, although the narrative title "offense" was the most common, appearing in more than 90 percent of the reports. Not surprisingly, many of the section headings as well as the sequence of the reports themselves were identical to those utilized in the Federal probation system. Those headings and sequence were, of course, well articulated in the 1965 monograph of the Administrative Office of the United States Courts, the best

known prescription for presentence report format and content published to date.

The data in Table 3 demonstrate the varieties of data utilized in the narrative portions of presentence reports nationwide. Only 13 of the 26 identified sections appeared in one-half or more of the reports analyzed. Seven of the 26 section headings were targeted upon the offense itself or upon closely related matters such as the statement of the arresting officer. And while it is significant to note that a recommendation as to disposition of a particular offender was made to the sentencing court in approximately two of three cases (64 percent), the identification of a treatment plan or a statement about "available resources" was found in less than 20 percent of the reports.

Although the 26 distinctive section headings were relatively simnple to identify, the precise kinds of data which were to appear in each of these sections—by inference, at least—were left to the discretion of the individual probation officer who conducted the investigation and prepared the report. Only a few of the sample reports reviewed identified "essential" versus "optional" data (a distinction made in the Federal monograph); thus, it appears that individual officers have considerable discretion as to the details of presentence report narrative content. Sequence and section headings, on the other hand, appear to be determined by the probation organization. Finally, it appears that it is an unusual jurisdiction in which the court outlines its data requirements for its decision-making (sentencing) to the probation agency. The general practice appears to be that the content of the presentence report is the concern almost solely of the probation organization and its officers.

C. Ordering a Presentence Report

The data from the survey indicate significant variations in the requirements for presentence investigation and report nationwide; with some exceptions, the report appears to be generally discretionary with the sentencing court. The major exception exists in a number of states which mandate a presentence report on offenders convicted of certain types of offenses that carry a potential imprisonment in excess of one year. But even in these "mandatory" situations, the content of the report generally is determined by the probation organization.

The survey data also suggest clearly that in cases other than those which mandate an investigation and report, two factors impact on the judicial decision to order the report. The first and most prevalent is related to the seriousness and/or notoriety of the offense and offender. The report not only gives the court additional data to use in selecting a sentence from the alternatives available, but also additional time to evaluate the potential sentences against community sentiment (from outrage to indifference, for example) as well as the more traditional interests in protection of the community and needs of the offender. The court obtains both time and data from presentence activity. The second reason for ordering presentence reports tends to be more specific, as when the court in a particular case desires additional data of a medical or psychiatric nature or on some unique aspect of the offense and offender.

D. "Mini-reports"

"Mini-reports" frequently commented upon in the survey appear to be of three distinct types nationwide. The most common type is utilized in the lower or municipal courts for misdemeanor sentencing and involves very limited and generally unverified data about the offense and offender. There also exists "mini-reports" which are deemed sufficient to assist the court in selecting dispositions for special classes of offenses and offenders such as "drunk drivers school," "volunteer service" for individuals, or a fine for a company or corporation cited for violations of health and safety or environmental impact regulations.

The third and most significant type of "mini-report," essentially experimental in nature, is based upon a growing recognition of the interdependence of a number of variables in the presentence investigation and report process. These variables include numbers of officers and related support personnel available for the presentence effort, the numbers and types of offenders requiring investigation and report either by law or judicial desire, the time frames allowed from initiation through completion of the reports, types of data required for the reports, and other probation organization requirements and workloads, such as supervision requirements. While these factors are more often recognized and identified by the larger probation organizations, they are no less significant in the smaller

agencies. Resources available to the probation organization clearly impact the presentence function.

Some of the experimental "mini-reports" which have a research foundation attempt to match presentence data with judicial and correctional decisionmaking. Other experimental reports are essentially "paper efforts"—the use of forms—and prescribe quite precisely the type of data and limit significantly the amount to be collected.

Additional innovations reported in the survey and related to the probation resource issue included the collection of data by non-professional or paraprofessional personnel and the completion of extensive "family history" and related data forms by the offender himself.

In general, it appears that the motivation for presentence experimentation is pragmatic and operational; increasing demands for probation services without the allocation of additional resources have required examination of traditional approaches and some experimentation with new approaches. Cost effectiveness clearly is a motivating factor. Most of this experimentation has been and is absorbed by the probation organizations themselves; a survey of the ten Regional Offices of LEAA and each of the 50 State Planning Agencies disclosed little LEAA or other Federal or state agency funding in the area of presentence investigations and reports.

E. Summary

This chapter has reported briefly on a mid-1976 survey of presentence investigation and report practice in the United States. The survey was designed so that the assessment of current practice would facilitate the design of this Prescriptive Package. To the extent conventional wisdom is related to and reflected in practice, such wisdom is uneven across the United States, both within and between states. The requirements for presentence reports, at least in terms of content, vary enormously; they are seemingly determined by the probation organization alone with little organized input from its partners in the criminal justice system. The requirements for conduct of the investigation and completion of the report are ordered by courts on an equally diverse pattern ranging from frequently in some jurisdictions to rarely in others.

The 1976 survey revealed few attempts nationwide to change significantly the presentence process. The development of "mini-reports" because of limited resources is a singular exception. The survey revealed that the reports could be clustered into three broad categories: a) reports which follow the 1965 Federal monograph almost exactly or with minor changes only, b) those which evolve locally and remain idiosyncratic to a particular jurisdiction, and c) those reports which more-or-less strike a balance between the Federal monograph as gospel and complete localization. The selection of the Federal model in some jurisdictions was clearly a matter of convenience and expedience to select and utilize an established format; the evolution of some local models seemingly was more often by chance than design. The most common format is a balance between the Federal guidelines and local needs. That such is the case suggests that there may be a need for both standardization *and* localization.

To the extent these many formats and different data-contents meet the needs of justice system decision-makers, they are appropriate. Chapters IV and V will argue that presentence prescriptions should be tailored to individual jurisdictions from some constant set of standards and that the bottom line for all presentence activity must be the enhancement first of judicial and then correctional decision-making.

CHAPTER IV. PRESCRIPTIONS: THE PRESENTENCE REPORT

This chapter is targeted directly upon the presentence report—its format and content. It argues the acceptance of several major themes and provides prescriptions which support these basic positions. The assumptions upon which the chapter is constructed are presented first; the prescriptions follow.

A. Assumptions

The primary purpose of the presentence report is to provide the sentencing court with relevant and accurate data so it may select the most appropriate sentencing alternative and correctional disposition. Although use of the report for sentencing decision is paramount, its potential use for probation supervision and/or by other agencies within and outside the correctional system should be recognized. These other potential uses may influence determination of the content and format of the report; however, they are subordinate to the primary purpose of providing data which meet judicial needs.

The data requirements for criminal justice decision-making may be best determined by the decision-makers themselves. Therefore, presentence report design, both format and content, should be tailored to meet the needs of the individual criminal justice system. The primary inputs about the report should be made collaboratively by the court and the probation agency. Clearly, data requirements from other criminal justice agencies should be determined and, where possible, incorporated into presentence reports. A singular prescription advocating or portraying "the" model presentence report is inappropriate; to the extent presentence reports are designed carefully by relevant decision-makers, different formats and content are acceptable.

Despite a tradition for "longer" rather than "shorter" presentence reports (with neither term well defined here nor anywhere else), there is little evidence that more extensive data are better for decision-makers than less, particularly if less amounts of data are deliberately (rather than traditionally) selected, are relevant and verified. Shorter rather than longer reports are advocated with the caution that a process be established to permit expansion for addressing unusual circumstances about the offense and/or offender.

The 1971 commentary of John Hogarth warrants special attention here:

> There is considerable research evidence suggesting that in human decision-making the capacity of individuals to use information effectively is limited to the use of not more than five or six items of information. In many cases, depending on the kind of information used, the purposes to which it is put, and the capacity of the individual concerned, the limit is much less. Despite this evidence there is a noticeable tendency for presentence reports to become longer. One of the most unfortunate myths in the folk-lore concerning sentencing, is the notion that the courts should know 'all about the offender.' Quite apart from whether much of the information is likely to be reliable, valid or even relevant to the decision possibilities open to the court, the burden of a mass of data can only result in information-overload and the impairment of the efficiency in which relevant information is handled. This suggests that if probation officers wished to improve the effectiveness of their communications to magistrates they would be advised to shorten their reports.[49]

The standard presentence report should be tailored to meet the needs of individual criminal justice systems and be relatively short. Consideration should be given to including, at a minimum, some commentary in the following data areas:

Description of the offense
Prior criminal record
Personal history
Evaluation
Recommendation

The level of detail presented in these data areas—or others if there are additions, modifications or deletions to this list—should be determined by the individual justice system.

Although it is recommended that the standard report address at least the areas above, it should be flexible enough to allow for expansion of both subject areas and the level of detail in each subject area if the circumstances in a particular case so warrant. Guidelines should be developed to spell out the conditions which govern expansion of the

standard report to other areas of inquiry or to greater levels of detail.

At a minimum, the preparation of a presentence report is encouraged a) in every case in which sentencing to confinement for a year or longer is possible and b) in all other cases at the discretion of the court. To the extent resources are available, it is recommended that a presentence report be prepared in every case in which the court has a sentencing option, with the kinds of data and levels of detail dependent upon some classification of offense and/or offender, and with explicit operational guidelines for such classification and established by the probation organization and the court.

A probation organization recommendation for or against probation is encouraged, but only if a) the offender is not seen as a "client" during the presentence investigation and report process (the court is the "client"), b) the sentencing recommendations are the responsibility of the probation organization and not the individual officer, and c) the recommendations are measured against probation organization criteria and guidelines so as to enhance consistency and minimize disparities. In making recommendations, the probation organization must understand that the purpose of the report in general and the recommendation in particular is to assist the decision-maker, protect the community, and reduce the probability of continued criminal behavior on the part of the offender.

To the extent that probation is a possible disposition, the presentence investigation and report should provide the sentencing court with data outlining a responsible and achievable plan for probation supervision, identify available resources, and state the recommended terms and/or conditions of probation.

The data contained on the cover sheet (often known as the "face" sheet) of the report should be agreed upon by the court and the probation organization. Though it should be minimal in length, it should include information required for identification or quick reference, i.e., the court docket number, the date of sentencing and the offense. The presentence report should not be written on the cover sheet.

B. Prescriptions Multiple Presentence Report Formats and Content

1. Individual criminal justice jurisdictions should design several gradations or varieties of presentence report formats and content to meet the explicit sentencing needs within the jurisdiction and to respond to varying needs for data about different offenses and/or offenders. These different reports must meet the specific needs of the court and, where possible, the needs of correctional agencies. The court, the probation organization, correctional agencies and other criminal justice organizations should collaborate in the design of presentence report formats.

Commentary

Investigations and reports serve to provide the sentencing court with information and analyses which assist in selecting sentencing dispositions. The information and analyses needed vary by offense/offender and sentencing options available. Investigations and reports may be short if a) the offense is simple, b) there are no apparent personal or social complexities, and c) the sentence cannot exceed one year. In this instance the court may be given merely a "fact sheet," some minimum narrative, and an evaluation. Additional detail may be provided if the offense/offender is more complicated as, for example, where charges are pending elsewhere, detainers have been filed, violence was part of the offense, etc. Regardless of format, however, there is a requirement for some analysis and evaluation by the probation officer.

There is a need to tailor the investigation and report to the needs of the sentencing court. This tailoring requires the development of a variety of report formats with different formats used for different offenses/offenders or other explicit classification schemes. Because data collected during the investigation are useful to other correctional agencies, collaborative design work to meet other agency data needs is appropriate.

2. The design of multiple presentence report formats and content is primarily a module building exercise. A standard report which includes "x" major areas of interest and "y" levels of detail should be created for the jurisdiction. This standard report should be used "most" of the time. For a variety of explicit reasons (most likely centering upon unusual offense, offender or circumstances surrounding the case), additional

areas of interest or levels of detail may be specified for inclusion in an expanded report.

Commentary

Upon finding that a standard report is inadequate to meet decision-makers' needs, a jurisdiction should have two basic options for improving the report. The first option is to utilize another "standard" report which automatically adds areas of interest and/or levels of detail. Thus, a jurisdiction might have two or more standard reports with the "shorter" one used most of the time and guidelines describing those circumstances when the "longer" presentence report should be utilized. The second option simply adds special areas of interest or increases the level of detail on an ad hoc basis following a discussion of the case between the probation organization and the sentencing court.

Whether two or more reports are utilized in the jurisdiction or additional modules are added by the court/probation organization on a case-by-case basis, it is essential that guidelines be established for preparation of reports other than the basic or standard model.

3. In designing multiple presentence report formats, criminal justice jurisdictions should determine: a) the general areas of information seen as essential about the offense and offender *and* b) the amount of detail required in each of those areas. Thus, there is a requirement for identifying subject areas of interest and the levels of detail about those subject areas.

Commentary

The multiple presentence report formats and content designed by a jurisdiction may be constructed of modules, each one of which focuses upon specific areas of information. Eighteen possible areas of information, or modules, which may be relevant to judicial and correctional decision-making are:

Legal Chronology and Related Data
Offense
Prior Record
Personal History
Physical Environment (home and neighborhood)
Personal Environment
Education and Training
Religious Involvement
Interests and Leisure Time Activities
Physical Health and History
Mental Health and History
Employment and Employment History
Military Service
Financial Status: Assets and Liabilities
Resources Available
Summary
Evaluation and Prognosis
Treatment Plan and Recommendation

This list is to be viewed only as illustrative. The list may be expanded or contracted readily by separating or joining together areas of information: for example, "treatment plan and recommendation," now combined, could be separated into discrete areas of information; conversely, "physical and mental health" could become a broader, more inclusive area of information simply by combining the two categories. It also may be desirable to add areas of information which are not suggested at all in the above listing or to delete one or more of those suggested as not relevant to requirements and needs in a particular jurisdiction. Then too, the order and sequence of these 18 areas of information are to be viewed as illustrative. Each one of the 18 broad subject areas contains a list of "bits of information" which may be useful to the decision-maker. Appendix C includes the 18 items with lists of data which might be subsumed under each item heading.

The modular construction process suggests that the designers of presentence report formats and content first identify the broad subject areas of interest (from this list of 18 possibilities or some other list). The designers should then select from the chosen subject areas explicit items of information which seem particularly relevant to decision-making in the jurisdiction. Thus, a two-step process is recommended: determination of those broad areas which are of particular interest in a jurisdiction and then selection of specific bits of data to flesh out the skeleton. The areas of interest become the paragraph or topical headings in the report; the specific data become the content.

It is essential to recognize that neither the 18 subject areas nor the lists of data which comprise each of them are seen as exhaustive. The headings and items of data are meant to be illustrative of the two-step process.

4. Although presentence reports are tailored to meet the needs of the individual criminal justice jurisdiction, they normally should include some comment about the following areas:

Description of the Offense
Prior Criminal Record
Personal History
Evaluation
Recommendation

The level of detail about these five areas—and/or others if there are additions, modifications, or deletions to the list—should be determined by the individual criminal justice jurisdiction and should vary according to the offense and/or offender.

Commentary

Several studies on judicial and correctional decision-making have indicated that the current offense, the prior criminal record and personal history are important to the probation officer's selection of a recommendation for sentencing and to the court's selection of the sentence. The evaluation represents the probation officer's assessment of those factors which resulted in the offender's appearance before the court for sentencing, the resources which will be required to assist the offender to avoid further conflict with the law, and estimates of the probability of further law violations and of the risk to community safety should probation be granted.

A recommendation that the offender be placed on probation should include the proposed conditions of probation and a plan of supervision. The resources available and required should be identified.

5. The narrative portion of the presentence report should be arranged topically.

Commentary

Regardless of format, presentence reports should be arranged topically. Such arrangement provides continuity and clarity and facilitates understanding and utilization by court and probation personnel. Consistency in topical arrangement saves organizational resources and insures completeness.

6. The sentencing court, in collaboration with the probation organization, should set guidelines specifying which presentence report format is to be utilized in particular types of cases.

Commentary

The policies which emerge from the collaborative determination of case-format requirements should be in writing and reviewed regularly. As a basic principle, they should insure that enough data are collected and analyzed so that the most appropriate sentencing alternative may be selected to protect the community and serve the needs of the offender.

7. At the discretion of the probation organization or the direction of the court, the presentence report should be expanded to address unusual circumstances surrounding the offense, the offender or community reaction and concern.

Commentary

The requirement for flexibility mandates that reports be expanded when it appears that they cannot otherwise provide an accurate portrayal of the offense/offender, unusual circumstances in the case or community concern. The option to expand should lie both with the probation organization at its discretion and the court at its direction.

8. The sentencing court, in collaboration with the probation organization, should set guidelines specifying the conditions or circumstances which warrant expansion of a presentence report.

Commentary

In order to promote consistency within the organization, the court and the probation organization collaboratively should establish general criteria for expansion of reports. These criteria should make constant discussion of format changes unnecessary. The guidelines should be in writing and should be reviewed regularly. However, these guidelines should not prohibit discussions of report format adjustments in particular cases.

9. Data presented in the presentence report should be verified; unverified information should be identified as such.

Commentary

It is essential that verified and unsubstantiated data be identified in presentence reports. Too great a risk is presented to the community, the probation organization and the offender when unverified data are co-mingled with verified data. Rumors, allegations, second-hand and unverified data, if included at all in reports, must be clearly identified as such.

Some of the data collected by the probation organization will be "secondary" data—developed originally by some other organization. There must be attempts to verify the accuracy of secondary data and equal efforts to insure that primary data—that collected by the organization itself—are accu-

rate. Sources and procedures which tend to yield erroneous data should be eliminated. Written policies and guidelines and supervision will reduce many errors.

10. Presentence reports should contain those data which are relevant to judicial dispositional decision-making. "Nice to know" information should not be included in presentence reports. The information provided the court both in terms of format and detail should be tailored to meet the sentencing alternatives available.

Commentary

Regardless of report format, the data in the presentence report must be of a "need to know" variety. The determination of "need to know" data may best be made by the court in collaboration with the probation organization. Long reports with irrelevant data are not utilized; they waste valuable resources in preparation and review. The amount of data "needed" may vary by the sentencing alternatives available.

The Cover Sheet

11. One standardized cover sheet (or face sheet) should be designed by the criminal justice jurisdiction. It should contain a minimum amount of data—primarily information for identification or quick reference such as docket number, offense and date of sentencing. The data included should be agreed upon by the court and the probation organization. The cover sheet is not a substitute for the presentence report; cover sheet data generally should not be repeated in the report itself.

Commentary

The cover sheet, which should be limited to one page, is an excellent location for supplemental data such as social security number, law enforcement agency identification numbers, date of birth, etc. These identification data insure that case files, information and persons are properly matched. The cover sheet should be factual and complete as of the date of its submission to the court.

In developing a cover sheet, the agency should consider data processing potential in the jurisdiction and design the sheet to facilitate the removal of data for computer-based operations.

12. The probation officer should make a recommendation for or against probation to the court in every case. The recommendation should be in accord with general probation organization guidelines and policy.

Commentary

The probation officer, through the presentence investigation and report process, should be able to offer some particularly useful insights about the various sentencing alternatives as they relate to community safety, the probability of continuing criminal behavior, and offender needs and available resources. Accordingly, the officer should make a recommendation to the court regarding the granting or denial of probation. The recommendation should be consistent with recommendations made in similar cases and be in accord with general probation organization guidelines. Disparities in recommendations contribute to disparities in sentencing. Recommendations that differ substantially from organizational policy should be fully justified and reviewed with supervisors.

13. The probation organization guidelines for presentence report recommendations should discourage imprisonment and encourage probation as the recommended disposition providing that community safety is not endangered, that supervision will enhance community protection, and that the offender is in need of correctional programming which can be provided most effectively in the community.

Commentary

Probation is an appropriate disposition providing that the safety of the community is not endangered and that programs available in the community can meet identified needs of the offender. Judgments about these factors must evolve from presentence investigations and reports and should be expressed in the recommendation.

14. When the probation organization recommends to the sentencing court that probation be granted a convicted offender, it should be with the understanding that probation is a sentencing disposition which places an offender in the community under supervision.

Commentary

The purose of probation supervision is to protect the community and reduce the probability of continued criminal behavior on the part of the probationer. Supervision must provide effective monitoring of and service to probationers, but public safety is paramount. The types and intensities of supervi-

sion to provide community protection should be tailored as should the utilization of community resources to meet probationer needs.

15. In making a recommendation for or against probation, the probation organization should not be influenced by plea or sentence bargaining commitments.

Commentary

The presentence report should contain an objective assessment and impartial evaluation of the offender; the recommendation for or against probation should reflect the best professional judgment of probation personnel. The evaluation and recommendation should not be constrained by formal or informal agreements entered into by other personnel in the criminal justice system relating to plea or sentence bargaining. To allow such agreements to influence the report is to corrupt the objective fact-finding purpose of presentence activity.

The Conditions of Probation

16. The conditions of probation should be definite, few in number, realistic, and phrased in positive rather than negative terms. The conditions are neither vague nor ambiguous.

Commentary

The conditions of probation are the standards for probationer behavior in the community. These standards must be clear, positive, equitable, realistic and few in number. To expect compliance with vague, tenuous and unrealistic conditions is itself unrealistic and jeopardizes the possibility of successful probationer adjustment. The probationer has a right to know what is expected of him.

The conditions of probation should be reviewed with all staff members so there is consistency in application and equity for all probationers. Conditions of probation should be developed to collaboration with the court.

17. As part of a presentence report recommendation for probation, the probation officer should identify the need for special conditions of probation, if any, and recommend that these special conditions be appended to the conditions of probation.

Commentary

In addition to those general conditions of probation which are applicable to all probationers, possible special conditions should be identified during the presentence investigation and recommended to the court. If it appears that these additional conditions will enhance public safety or increase the probability of a successful community adjustment, they should be appended by the court to the general conditions. Special conditions should be tailored to individual probationers.

Written policies about special conditions should be developed collaboratively by the probation organization and the court and should be reviewed regularly.

A Plan for Probation Supervision

18. A plan for supervision of individuals selected for probation should be developed during the presentence investigation and included as part of the presentence report.

Commentary

The appropriate time to develop a plan for a possible period of probation is during the presentence investigation. Should probation be granted, a plan will be available on the first day of supervision. The plan, which should include such basic considerations as employment, residence, education, and so on, should be developed with the defendant during the investigation. The plan must be realistic in that the goals set with the probationer are attainable and the resources required are available or are capable of being developed. The probation plan identifies that which should be done by stating probation objectives; it also identifies the means for achievement of objectives. Plans help eliminate ad hoc supervision practice.

19. During the presentence investigation, special attention should be given to seeking innovative alternatives to traditional sentencing dispositions of probation, jail or imprisonment. Attention also should be directed to finding or generating resources which permit individualized probation supervision programs to be utilized if probation is ordered by the sentencing court.

Commentary

The traditional dispositions in the adult courts are probation, confinement in a local facility or confinement in a state correctional institution or a combination of these. It is important to seek other alternatives which will permit the tailoring of a

court disposition to the protection of the community and the needs of the offender. The appropriate time to search for alternatives is during the presentence investigation; innovation and creativity are to be encouraged. The use of alternatives such as halfway houses, detoxification centers, civil addict commitment programs, self-help groups, public service projects and/or restitution to victims and reparation to the general public may be appropriate.

C. Summary

This chapter adopts the position that the primary purpose of the presentence report is to provide the sentencing court with relevant and accurate data so that the court may select the most appropriate sentencing alternative considering both community safety and a reduction in the probability of continued criminal behavior on the part of the convicted offender. Building upon this premise, the data required to make decisions should be identified by the decision-maker—the court—in collaboration with its investigative arm, the probation organization, and other criminal justice agencies, primarily correctional. Inasmuch as different jurisdictions may have different criteria for decision-making, it is appropriate for different presentence report designs to be utilized. However, all designs should be a conscious and deliberate response to the identification of data requirements for decision-making.

Jurisdictions designing presentence reports are encouraged to utilize a modular approach and to follow a two-step process: a) identification of broad subject areas of information and b) determination of the level of detail required within those broad subject areas. Appendix C provides examples of both subject areas and levels of detail. Individual jurisdictions should make additions, modifications, and/or deletions to the examples given.

It is recommended that each jurisdiction design a standard report and establish guidelines which allow for expansion of that report when circumstances so dictate. Expansion should entail either use of a more extensive report (in subject areas and/or levels of detail) or addition of modules on an ad hoc basis after consultation between the court and probation organization. It is urged that the standard report be "short" and capable of being expanded rather than "long" and capable of being reduced.

Further, to the extent resources are or can be made available, as presentence report on all convicted offenders is recommended. Varying presentence report designs should be utilized for different types of offenses and/or offenders, as predetermined by collaborative efforts within the criminal justice community. Finally, it is strongly suggested that the cover sheet contain primarily reference or identification data and that its length and content be minimal rather than extensive and all-inclusive.

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CHAPTER V. PRESCRIPTIONS: THE PRESENTENCE ENVIRONMENT

The presentence investigation and subsequent preparation of a presentence report are not activities conducted in isolation from a larger probation-corrections-criminal justice environment. Presentence activities are impacted by a variety of forces in this non-presentence environment including societal changes, divergent and sometimes transient philosophies about criminal justice in general and corrections in particular, political and economic considerations, legal decisions, organizational, administrative, management and decision-making arrangements, and the like. These many forces, not always visible, often impact upon presentence activities of probation organizations in subtle, but significant ways.

The purpose of this chapter is to provide a limited number of general prescriptions not directly related to the content and format of the presentence report. Grouped more or less homogeneously, these prescriptions are a direct response to specific concerns surfaced by some correctional administrators who responded to the presentence activity survey described in Chapter Three. It is certainly true that many of these prescriptions are "obvious," such as the need to have the probation organization free from political influence and to have adequate resources. It is equally true that the regularity with which these subjects were surfaced by administrators suggest some real constraints in practice. These prescriptions were designed to be responsive to expressed concerns of probation administrators; some may be controversial, others may be decided by judicial decisions, but all are relevant because presentence practice may be significantly impacted by their adoption or rejection.

Although not explicitly attributed, some of these prescriptions were drawn from the National Advisory Commission on Criminal Justice Standards and Goals, while others were selected from draft standards prepared for the Commission on Accreditation for Corrections. Finally, some were extracted from standard operating procedures (SOP's) provided by correctional administrators as part of their response to the presentence activity survey described in Chapter Three.

Purpose of the Presentence Report

20. The primary purpose of the presentence report should be to provide the sentencing court with relevant and accurate data in a timely fashion so that it may select the most appropriate sentencing alternative.

Commentary

Although use of the report for the sentencing decision is paramount, its potential use by other agencies in the correctional system should be recognized. These other potential uses may be factors in determining the content and format of the report; but the primary purpose of meeting judicial sentencing needs is not subordinated to them.

Cases Requiring Presentence Reports

21. A presentence report should be prepared by the probation organization and presented to the court in every case in which there is a potential sentencing disposition involving incarceration for one year or longer.

Commentary

The loss of freedom through a sentence of confinement is a most severe sanction. To insure that the decision to select the confinement alternative is most appropriate, it is essential that the sentencing court have accurate, complete and relevant data in all cases in which sentences in excess of one year are possible. The one year time frame is arbitrary: a 30 day sentence to confinement is significant. As resources become available, presentence reports should be prepared in other cases in which confinement is an alternative. The presentence report may become both a legal record and a portrait of the offender.

22. For cases other than those involving incarceration, the court should have discretion to request

that the probation organization prepare and present a presentence report to the court.

Commentary

It is essential that the court have the authority to order a presentence investigation and report in any case if it will enhance the selection of that sentence which best serves to protect the community and meet the needs of the offender.

Resources

23. All sentencing courts should be provided with probation resources which permit accomplishment of presentence investigations and written reports.

Commentary

Sentencing courts must have probation resources which permit presentence investigations and written reports. These investigations provide relevant and accurate information for the critical sentencing decisions which can so significantly impact upon the community and the offender.

24. An adequate number of qualified probation staff or proportion of staff time should be assigned to the presentence function.

Commentary

Regardless of how the probation organization is structured to carry out the investigation function, the personnel assigned to that function must be adequate in number and qualified by ability, interest and training. "Adequate" staff is defined in terms of productivity standards developed by the probation organization. Investigations and reports should be assigned equitably in the interest of fairness, maintenance of morale, productivity and quality of work. Continuous training and supervision will insure high performance in the investigation function.

25. Adequate support staff and related resources should be allocated to the presentence function.

Commentary

Sufficient auxiliary staff—clerks, typists, volunteers, paraprofessionals—must be available to support the investigation and report functions. "Adequate" is defined in terms of performance standards rather than precise numbers. Equipment such as typewriters and dictating equipment and related supplies must also be available to support the functions.

26. The probation organization should have a space management program which insures adequate facilities for all of its operations.

Commentary

The purpose of the space management program is to enhance delivery of services to the courts and probationers. An annual review of space requirements should consider manpower, equipment, functions, adequacy of current space, location, privacy, safety and other related matters. Particular attention should be given to enhancing communication between and among probation staff, subjects of presentence investigations, probationers, and others.

27. The facilities and the space management program of the probation organization should insure that presentence activities are conducted at locations that are readily accessible to the subjects of these activities.

Commentary

The location of space for presentence activities may be at sites other than in court houses and similar public facilities. Convenience, access to transportation, community orientation and a general enhancing of operations are significant considerations.

28. Probation personnel should be reimbursed for all necessary expenses incurred in the performance of their duties.

Commentary

Probation personnel must be reimbursed for their actual and necessary expenses incurred in the line of duty. The budget process at the beginning of the year and supervision of the budget during the year should insure that adequate funds are available.

Organization and Administration

29. The operations of the probation organization should be free from improper political influence.

Commentary

Improper political influence from within or outside the organization must not be allowed to impact upon organizational decision-making relating to either probation personnel or offenders/probationers. Political intrigue will do irreparable damage to the agency by eroding public confi-

dence and, further, will prohibit the development of a professional probation organization.

30. Responsibilities and functions of the probation organization should be specified by statute, rules of the court, the parent correctional agency or, in their absence, by the organization itself.

Commentary

A probation organization may best achieve its goals and objectives when responsibilities and functions are articulated clearly either by its parent agency or by statute. Uncertain or vague responsibilities and functions will hinder both individual and organizational effectiveness and result in a loss of understanding and support from criminal justice and nonjustice agencies and the general public. Sound management principles such as management by objectives cannot be initiated if the objectives are tenuous and ill-defined.

31. The authority and responsibilities of the administrator of the probation organization should be specified by statute, rules of the court, the parent correctional agency or, in their absence, by the organization itself.

Commentary

Just as it is essential that probation organization functions and responsibilities are clearly defined, so too is it essential that the authority of the administrator and the responsibilities given him are defined. Leadership of the probation organization cannot evolve or be maintained if the roles and responsibilities of the administrator are unclear. A clear definition of roles and responsibilities also provides guidance for probation operations and potential for evaluation of performance.

32. The administrator of the probation organization ultimately should be held responsible for all that his organization does or fails to do. This responsibility cannot be delegated to subordinates.

Commentary

The administrator alone is responsible for that which his organization does or fails to do. He meets this challenge by organizing his agency, providing direction and supervision, policy determination and planning, control and inspection, and development of personnel. He must manage his resources to meet goals and objectives.

Goals and Objectives

33. The administrator of the probation organization should be responsible for coordinating the development and formulating the goals of the organization, establishing policies and priorities related to them, and translating the goals into measurable objectives for accomplishment by probation staff.

Commentary

A basic requirement of the probation administrator is the balancing of organizational goals and objectives with the resources available. There are seldom surplus resources available (personnel, time, dollars, etc.). To use resources wisely, the administrator must translate broad organizational goals into more specific objectives which are then prioritized for accomplishment by staff. Without prioritized goals and objectives, the organization will be without focus, continuity or consistency. Articulation of priorities not only serves the organization, but also provides "external" benefits by informing criminal justice and non-justice agencies and the public of probation goals and objectives. It is essential that the administration obtain inputs about goals, objectives and techniques for achieving them from his staff, the courts, the criminal justice agencies, and the community.

34. All operations of the probation organization should be assessed for results by the administrator of the organization or his designated representatives. Assessments should be done through inspections and reviews of policies, procedures and data.

Commentary

Timely and periodic assessment of the performance of the organization assures the administrator that all standards (organizational, management, programmatic, etc.) are being applied and met. This internal administrative assessment process should exist apart from any external or ongoing audit conducted by other agencies.

35. Assignments and duties in the probation organization should carry with them the commensurate authority to fulfill the responsibilities. Persons in the probation organization to whom authority is delegated should be held accountable both for the use made of it and for the failure to use it.

Commentary

Assignments and duties cannot be achieved and fulfilled and personnel cannot be held accountable for their accomplishment unless they are authorized to use and manage resources of the probation organization. Authority and responsibility are inseparable in practice. Authority is delegated by the probation administrator to his subordinates so that organizational objectives may be accomplished. This authority must neither be abused nor interpreted to extend beyond that which is required by the specific assignment. Conversely, the failure to use authority and the subsequent failure to achieve organizational objectives cannot be condoned.

36. Tasks, similar or related in purpose, process, method, geographic location or clientele, should be grouped together in the probation organization in one or more units under the control of one person.

Commentary

To facilitate the assignment and accomplishment of tasks, the tasks should be divided according to time, place of performance and level of authority needed in their accomplishment. A probation organization will have diverse goals and objectives. Efficiency and effective utilization of resources require that similar duties or tasks be consolidated under the control of one person.

37. Specialized units should be created in the probation organization only when overall capability would be increased significantly.

Commentary

It is not practical to create a specialized unit in the probation organization for every conceivable function. Indeed, too much specialization may result in indifference to overall organizational goals and objectives. Specialized units should be created only if the management of resources and accomplishment of objectives would be enhanced. Specialized units must be needed, contribute to objectives, and assist in meeting established priorities. The continued existence of specialized units should be assessed regularly and terminated when the units no longer contribute to goals and objectives.

38. The span of control of a supervisor in the probation organization should be large enough to provide cost effective supervision; however, it should not be so large that the supervisor cannot manage the units or personnel under his direct control.

Commentary

Depending in large measure upon the size of the probation organization and the responsibilities assigned to it, it may be necessary to add supervisors to the organization to insure that all objectives are being met effectively and efficiently.

39. Effective supervison should be provided for every member of the probation organization and for every function or activity.

Commentary

To insure that agency objectives are being met, it is essential that every individual, function and activity in the organization be supervised. Organizations neither manage nor administer themselves.

40. The probation organization should have legal counsel available.

Commentary

The probation organization operates within a legal framework. Legal staff must be available for timely consultation on a wide range of issues to insure that the public, the agency and the probationer are afforded the legal protection to which they are entitled. It is not essential that counsel be a staff member of the organization.

41. The probation organization should have a public information/relations program which includes the development and distribution of information about the department, its philosophy and operations.

Commentary

The probation organization will benefit from an enlightened public and informed agencies within and outside the criminal justice system. The organization should establish an information program which insures that the probation organization and its goals and objectives are known. The program should address generalized information requirements and should provide for specific commentary about newsworthy incidents. The program should be proactive and geared to all segments of the community from school groups to senior citizens. The use of probation organization personnel to give speeches, write reports, make media presentations, etc. should be encouraged. Opportunities to

inform and educate other agencies and the public should be welcomed.

The Management of Presentence Activities

42. The administrator of the probation organization should be responsible for the organization and management of the investigation and reporting functions so as to effectively and efficiently provide presentence services to the court.

Commentary

The investigation function is dependent upon the organization and system established to perform it. Investigations and reports comprise a significant amount of total probation activity. Where demands for investigations are great, it may be more efficient and effective to provide for a substructure within the organization with a separate responsibility for the function. When investigation requirements are low, consolidation of the investigation and supervision functions may be practical. In either case, responsibility for the investigation function should be assigned to a member of the staff at the administrative level. A logical, orderly and expeditious work flow from assignment of a requirement for an investigation to completion and delivery of the report to the court is required.

43. The administrator of the probation organization should insure that appropriate priority is assigned to the timely completion of presentence investigations and reports with minimal adverse effect upon the delivery of other probation services.

Commentary

The expeditious completion of presentence investigations and reports is a high priority. Inordinate periods of detention for offenders awaiting sentence are not in the best interests of justice. Special attention must be given to meeting court scheduled sentencing dates while also meeting other probation requirements. Other functions, supervision, for example, cannot be neglected. Probation management must schedule completion dates for reports so as to organize the total workload most effectively. A presentence investigation and report preparation should not exceed three weeks in general or two weeks for offenders in custody. These time frames, however, must always consider the nature of the offense, complexity of the offender's circumstances, possible dispositions, availability of prior reports and the fact that the reports must be delivered to the court in time for review and analysis.

44. The probation organization, not the individual probation officer, should be held accountable for the conduct of presentence investigations, preparation of reports, and selection of sentencing recommendations for the court. Written guidelines should be provided the probation staff for the conduct of presentence investigations, preparation of reports, and selection of sentencing recommendations for the court. A clear policy indicating who signs the presentence report should be articulated.

Commentary

Although individual probation officers conduct investigations, prepare reports and select sentencing recommendations, they do so in the name of the probation organization. As such, the officers must operate within general guidelines and policies of the organization. It is essential that the quality of investigations and reports be high and that disparities in recommendations be minimal. Written guidelines should be developed in collaboration with the court and reviewed regularly.

45. The conduct of presentence investigations, report preparation and selection of sentencing recommendations for the court should be subject to ongoing supervision and review by the administrator of the probation organization.

Commentary

As is the case with every probation function, the administrator of the probation organization or his delegated representative must provide supervision and review of operations. The fact that clearly defined policies exist in the organization does not lessen the requirement for supervision. Supervision insures quality control of the probation process.

46. The probation organization should insure that effective coordination and communication exist with agencies in the criminal justice system and with other public and private agencies and organizations which can impact upon the organization's delivery of services to the court and to probationers. These agencies and organizations include but are not limited to labor unions, churches, schools, civic groups, social service agencies, and employment services.

Commentary

Clearly, the probation organization does not operate within a vacuum; rather, it is closely tied to other justice and non-justice agencies and the community. The delivery of services is closely related to the understanding and good will of other agencies. Communication networks must therefore be established with them. It is important that organizational linkages include criminal justice councils, planning units, community councils and the like.

47. In those cases where confinement of the adjudicated offender or special community treatment is ordered, probation organization procedures should insure the timely transmittal of presentence report data to the institution or community treatment agency.

Commentary

In those instances in which the offender is sentenced to confinement or community treatment is ordered, presentence materials should be provided to the receiving institution to assist in its classification process. Written guidelines, developed in collaboration with agencies receiving committed offenders, should be available and should cover such matters as method and timing of transmittal of documents.

Timing for Investigations and Reports

48. A presentence (or predisposition) investigation should not be conducted nor a presentence report prepared until the defendant has been adjudicated guilty of an offense unless the three following conditions exist: 1) the defendant, on advice of counsel, has consented to allow the investigation to proceed before adjudication; 2) the defendant is incarcerated pending trial; and 3) adequate precautions are taken to assure that information disclosed during the presentence investigation does not come to the attention of the prosecution, the court or the jury prior to adjudication.

Commentary

The conduct of a presentence investigation and completion of a report prior to adjudication of the charges appear to be unnecessary. At an absolute minimum, however, the conditions of consent, confinement and adequate precautions against disclosure must be met prior to pre-adjudication investigations and reports. This pre-adjudication process should be used only under exceptional circumstances, for findings of not guilty mean a waste of resources; compromise of information is always possible; and other alternatives exist for removing a defendant from pre-adjudication confinement.

49. The probation organization should be given sufficient time by the court to conduct an adequate presentence investigation and prepare an appropriate report.

Commentary

If presentence reports are to provide relevant and verified data to the courts to assist in judicial decision-making, it is essential that adequate time be available for the investigation and report writing function. Although precise time frames cannot be identified, a target of three weeks for non-confined offenders appears reasonable; a maximum of two weeks may be appropriate for offenders in custody. In setting time frames, consideration must be given to the type and format of the report, the nature of the offense, sentencing options available to the courts, etc. Time frames for investigations and reports should be developed in collaboration with the courts.

50. The presentence report should be submitted to the court for review and evaluation well in advance of the date set for sentencing. The probation officer and/or an appropriate supervisor should be available to discuss the report with the sentencing judge in chambers.

Commentary

The presentence report must be delivered to the court in sufficient time for review and evaluation. Preparation of quality reports is irrelevant if the court does not have sufficient time to read and assess the document and perhaps discuss it with probation staff. A minimum of two full days is seen as essential for the court's review, but this generalized time frame must be adjusted to judicial schedules and workloads. The probation officer and/or his supervisor should be available to discuss the report with the sentencing judge. The purposes of such a meeting include insuring that the report is complete and accurate and that the court understands fully the data presented.

The Use of Non-Professionals

51. The probation organization should use staff other than probation officers to collect basic, factual infor-

mation during the presentence investigation, thus freeing the officers from routine investigative functions and permitting them to use their skills more appropriately.

Commentary

Some of the factual data required in an investigation and for the presentence report may be collected by non-professional staff, thus freeing the probation officer to use his skills in such non-routine matters as interpretation of data and development of a probation plan. Examples of data which may be collected readily by non-professionals are school records, prior employment verification, etc.

52. Probation officers should be released from routine clerical and recordkeeping duties through the assignment of clerical personnel, paraprofessionals and volunteers.

Commentary

There are many tasks which may be completed by other than professional personnel. Probation officers should be relieved from routine functions in order that they may utilize their particular skills most effectively. The freeing of professional personnel from non-professional functions conserves resources, increases job satisfaction and overall productivity. Training must be made available to non-professionals to insure that newly acquired duties can be accomplished; supervision is required to insure that they are accomplished.

Confidentiality

53. Sentencing courts should have procedures to inform the defendant of the basis for the sentence imposed and afford him the opportunity to challenge it. These procedures insure that the defendant and counsel are, at a minimum, advised generally of the factual contents of the report.

Commentary

Fairness to the defendant dictates that he be advised of the basis for the sentence imposed and be given an opportunity to challenge the sentence. Since the court's decision-making at least in part will be influenced by the contents of the presentence report, the court should be prepared to summarize the factual contents of the report. The court should also consider summarizing the evaluation and recommendation of the probation officer. The identity of persons providing data about the offender to the probation organization should be protected.

54. Sentencing courts should have the discretionary power to permit inspection of the presentence report by the defendant and his counsel, the prosecution, and others who have a legitimate and proper interest in its contents.

Commentary

Examination of the presentence report should be permitted by the court in those instances where there is a conflict about factual data and where fairness to the defendant warrants full disclosure. Even here, particular attention must be given to the problem of identification of sources of data. The probation organization and the courts should collaboratively establish policy about disclosure of sources of data. The policy should be in writing and reviewed regularly.

Case Records

55. The probation organization should have written policies and procedures concerning case record management.

Commentary

Case records play an important role in planning, implementing and evaluating programs in the probation organization. The orderly recording, management and maintenance of data increase the efficiency and effectiveness of service delivery to the courts and probationers. Case records are a major component of the administration and delivery of services. These records are essential for sound decision-making and serve as the memory system of the organization. There must be policies to control the establishment, utilization, content, privacy, security, preservation, and timely destruction of case records.

56. The probation organization should maintain a single master index system identifying active, inactive, transferred and destroyed case records.

Commentary

A single master index identifying all case records is an important management tool. It should be centrally located for easy accessibility and include identification data such as name, date of birth, case number, disposition of file if not available, etc. For probation organizations with branch offices, a sepa-

rate file for active branch office cases is appropriate.

57. The probation organization should insure that the contents of case records are appropriately separated and identified according to an established format.

Commentary

The standardization of case files leads to efficiency and effectiveness. A logical sequence for filing would be intake data, legal documents, the presentence report, and supervision history. Case records management is improved by training professional and clerical personnel.

58. The confidentiality of presentence reports and case records should be safeguarded from unauthorized and improper disclosure. Written procedures should be developed to prevent unauthorized disclosure.

Commentary

The issue of confidentiality extends beyond the courtroom: it must permeate the entire investigation and report process from receipt of the case for investigation through final destruction of documents. Information about cases should not be discussed openly and files and records should not be left unattended or be given to persons who do not have a proper and legitimate interest in the case. Concern and action to prevent compromise of information is essential.

59. The probation organization should have policies concerning the security of, accessibility to, and destruction of case records.

Commentary

Case records must be located so that they are accessible to the staff members who use them. Records must be safeguarded from unauthorized disclosure, locked when not under supervision to prevent unauthorized access. A clear written policy relating to destruction of case records should be established in collaboration with the courts.

60. The probation organization should insure that the materials and equipment utilized for the maintenance of case records are efficient and economical.

Commentary

The costs of processing and storing probation records are such that controls are required. Purchase of equipment or supplies for processing and storage should be related to anticipated needs; an equipment inventory should be maintained. Files must be protected against fire, theft, water damage, etc. The location of files should facilitate work flow.

Standard Operating Procedures

61. The administrator of the probation organization should be responsible for the development and maintenance of an administrative manual or "standard operating procedure." The manual should be available to all staff and include the rules, regulations, policies and procedures which govern a) the conduct of probation operations and b) staff activities and behavior.

Commentary

The probation organization should have a single source for its established policies and procedures; it must be available to all personnel to facilitate consistency in organizational operations. The efficient management of resources is enhanced when all personnel understand how operations are to be conducted and have available to them expectations of personal behavior and definitions of organizational activities. The manual should be divided into at least two parts: a) conduct of operations (Examples: case recording, report writing, presentence activities) and b) staff behavior (Examples: client relations, media contacts, employee benefits). The manual should leave little doubt as to what is expected in the organization, although some considerable individual discretion must be allowed. The manual is also useful in explaining the probation organization to other public and private organizations.

62. All policies and procedures of the probation organization should be written and be reviewed at least annually, or more frequently, as appropriate.

Commentary

The functions and roles of the probation organization do not remain static. Thus, all policies and procedures should be reviewed at least annually to insure that the organization is meeting its goals and objectives efficiently and effectively, and that resources are being utilized properly. Changes in policies and procedures should be reflected in the administrative manual for all personnel must have access to current requirements. The use of a loose leaf binder will facilitate the maintenance of an up-to-date policies and procedures file.

63. Policies and procedures of the probation organization should be known by employees and controls should be established to insure compliance.

Commentary

Rules and regulations, policies and procedures, in part developed by staff and always known to them through staff meetings, training, and administrative manuals, must be followed. Failure to comply with organizational policy and regulation may reasonably be expected to result in adverse consequences to the organization and the individual. Compliance provides consistency and equity; supervision is essential.

A Code of Ethics

64. The probation organization should have a code of ethics developed by those personnel who are subject to its provisions.

Commentary

A code of ethics, serving to guide the professional and personal behavior of probation organization personnel, should be stated in a positive manner and be general in nature. The code should stress commitment to the community, the public service, the criminal justice system and the dignity of individuals. It should emphasize also such personal characteristics as integrity, objectivity, and professionalism.

There is a difference between organizational policies and procedures and a code of ethics. For example, organizational policy appropriately would prohibit the accepting of a gift or gratuity or engaging in personal business transactions with a probationer or his immediate family; a code of ethics would address the larger concern of conflict of interest generally.

Summary

Reviewers of these prescriptions should note that they are presented in response to specific concerns raised by some probation administrators in the course of the presentence activity survey described earlier. As such, they should not be considered as the complete list of prescriptions impacting upon presentence activity. Probation administrators and organizations seeking more complete prescriptions and standards for probation in general and presentence activity in particular should closely follow the development of total probation standards by the Commission on Accreditation for Corrections.

The prescriptions in this chapter are deliberately general in nature, for it is certain that there are requirements for modification to meet specific probation organization needs. Clearly, the administrative location of the probation organization within the criminal justice system, the types of services required by legislation and policy, organization, size, traditions and other concerns will influence the tailoring of these broad prescriptions to meet explicit needs. But while modification of general prescriptions to meet specific organizational needs is completely appropriate, the acceptance or rejection of these and/or similar standards will impact significantly upon the presentence investigation and report.

CHAPTER VI. EPILOGUE

The focus of this Prescriptive Package has been upon the presentence investigation and report with additional attention given the organizational environment in which presentence activities are conducted. In reviewing the history of presentence report usage, one immediately finds that a report to the court has been part of the probation heritage for 100 years—from the very inception of probation in the United States. Over these 100 years, and with considerable impetus generated by the emergence of the juvenile court movement, the presentence report has taken on a longitudinal stance with an emphasis almost exclusively upon the evolution of a personality from birth through current offense. This longitudinal perspective, seeking to identify and explain those factors which propelled an individual into criminal or delinquent behavior, generated the collection of an array of data: this, in part, the result of different perceptions of the causes of crime and delinquency. There was a data explosion and reports became longer—and longer—as though somehow the plethora of information itself would explain criminality and enable judicial and correctional decision-makers to make wiser judgments. Reports became more eloquent than useful as probation officers found that report writing matched their intellectual and cultural background more closely than supervision efforts in communities that were often foreign to them. Then too, reports had deadliness for preparation and presentation, and they were more visible to supervisors who made personnel decisions.

The presentence report survey described in Chapter Three documents rather clearly the diverse formats being utilized and data being collected nationwide. The fallout from the data collection explosion of the early years of presentence report usage remains as a residue of enormous disparity in presentence practice. In some jurisdictions, there is reliance upon a biographical narrative of a dozen or more single spaced typed pages; in others, there is the utilization of a simple check list or "fill-in-the-blank" forms. In most jurisdictions, there is continuity in format and data from year to year without review as to whether either format or data are relevant currently; tradition seems to be an unchallenged idol. To the extent the survey of presentence practice portrays conventional wisdom, it is an uneven and tradition-oriented wisdom.

This Prescriptive Package has been developed against some very basic assumptions. To the extent the reader is at ease with these assumptions, the package may be relevant; to the extent the assumptions are seen as invalid or inappropriate, the prescriptions may be rejected and arguments that they were reviewed and "approved" by two separate panels of nationally recognized authorities will be of small comfort indeed. The primary postulates are that data and decisions ought to be related; that although the presentence report may be utilized by a variety of criminal justice agencies, its primary purpose is to assist the court select the most appropriate sentencing alternative; that individual jurisdictions will have unique requirements for format and content and that reports unique to those jurisdictions are appropriate; that the modular construction of reports—starting with a simple format and some very basic data, to which is appended other data as individual offense and/or offender warrant—represents the best utilization of scarce resources; that presentence report designs should be developed collegially by the criminal justice agencies with probation and the judiciary leading the way; that reports of some type should be presented in as many cases as resources will permit and where sentencing alternatives exist; and that reports should contain a recommendation for or against probation and an achievable treatment plan which places primary emphasis on community protection.

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APPENDIX A

STANDARDS AND MODEL LEGISLATION RELATING TO PRESENTENCE INVESTIGATIONS

A-1 General Fields of Presentence Inquiry (1942)

Source: Helen Pigeon, *Probation and Parole*

Prenatal and developmental history

Family history with reference to disease, insanity, feeblemindedness

The prenatal history as to health of mother, accidents, injuries at birth

Early childhood, as to physical and mental development, nutrition, diseases, habits of eating, sleeping and play; attitude toward family

History of misconduct, early manifestations, temper tantrums, bad habits; overt delinquencies and their attendant circumstances

Methods of dealing with child; encouragement of interests, provision of outlets, satisfaction of sex curiosity; disciplinary measures, whipping, nagging, shaming, depriving of pleasures; the effect of these measures on personality and behavior

The family group

Social and economic status, conflicts in racial or religious life, cultural tastes and interests, family ideals and moral standards, integrity, criminal history

Social attitudes, philosophy of life, place of religion as a spiritual force, church attendance

Family loyalty, common interests and activities; in broken homes, cause and effect on social and emotional life of the family

Parents; characteristics, relation to each other, solidarity in disciplining children

Others im family; ages, attitude of brothers and sisters, favoritism, friction, amount of companionship, bad influences, presence of relatives or boarders and effect on child

The home

The neighborhood; location in city and town; play space, parks, nearness to movies, library and cultural facilities; characteristics and mobility of population; delinquency area, neighborhood gangs, organized crime

The house; location, size, comfort, sanitation, housekeeping, yard

Stability and position of family in neighborhood; interest and participation in its activities

School history

Grades, progress, work preferred; attitude toward school; truancy and other special problems; attitude of teachers and other officials; ambition for further schooling

Employment history

Age at beginning work; kind of work, wages, stability, advancement, skill, trades learned, type preferred; attitude of employers

Use of leisure time

Play interests active or passive, skill at sports, hobbies, artistic tastes, reading; choice of associates, size of group, gang activities, sociability, leadership, organized play in groups; lack of legitimate outlets, harmful play activities, gambling, lotteries, drinking

Marital situation

Conditions relating to engagement, marriage, divorce; personality of mate, marriage relations; relation of marriage to criminal conduct; use of income, budgeting

History of delinquency or crime

Identification reports from law enforcement agencies

Record of previous offenses, place, date, circumstances, disposition; case histories from social agencies, courts and institutions

Present legal status, whether on probation or parole; relation to other authoritative agencies; bail, warrant, detainer, appeal, deportation proceedings or other legal action pending

The present offense

Circumstances of arrest, detention, bail, hearing, trial, disposition, appeal

Circumstances surrounding commission of offense, time, place, number and type of companions, premeditation, operating methods, use of weapons, degree of daring, damage done, disposal of goods; relation to organized crime; adults involved (if a juvenile case); abnormalities attendant on offense, relating to sex or cruelty

A-2 The Presentence Investigation and Report (1966)

Source: American Correctional Association, *Manual of Correctional Standards*

A properly conducted presentence investigation provides the opportunity to study the defendant, his motivations and capacity for more orderly living, to consider a treatment plan and formulate a recommendation to the court. In order for this investigation to be meaningful, the court should allow sufficient time for the preparation of a written report. A minimum of three weeks is desirable for each investigation and more time should be given for an atypical case. The report should be submitted to the judge for study and evaluation well in advance of the sentencing date.

The investigation should cover all aspects of the defendant's life history. Information should be obtained from the defendant, his family, employer, schools, law enforcement agencies, courts, correctional agencies, friends, clergy, social agencies—all sources having pertinent information about the defendant. The information gathered must then be evaluated to select that which is significant and necessary to the written report.

The report should contain only those facts and information that contribute to the purpose of this report. The information in the report should be presented in such a way that the relationship and significance of the material is apparent. The selection of relevant information for inclusion in the report and the organization of that material to present it in a meaningful manner represents a skill that must be developed by the probation officer.

Though the formats for presentence reports vary, there are two principles applicable to all: (1) Information identifying the defendant and his offense and (2) topical classification of material in the narrative portion of the report. Data for the quick identification of the defendant and his offense (name, address, case number, race, sex, marital status) should be incorporated in the heading of the report. Other items may be needed by the court and the probation staff, but for maximum usefulness should be kept to a minimum. The material in the narrative portion of the report should be classified under certain headings, which should be typed in caps or placed in the margin so that they can be easily located. Once the headings and their order have been established, this arrangement should be adhered to for the convenience of the court and the staff.

Presentence investigation reports usually contain a section titled "Present Offense" which will set out the facts that brought the defendant to the court. This section should include the defendant's own version as told to the probation officer. The facts as reported by the law enforcement officials and the complainant, as well as their attitude if germane, are generally included here. Another section is usually entitled "Prior Record." This should be more than just a listing of arrests. An evaluation of the arrests or offenses is needed if the information is to be helpful. The remainder of the report should present a word portrait of the offender, as an individual, giving personal and family history, education, employment, health (physical and mental), religion, interests, social activities, military history, and financial resources.

A-3 Information for Sentencing (1967)

Source: Task Force on Administration of Justice, The President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Courts*

It is essential that there be systematic procedures for providing relevant information about the offense and the offender to the sentencing judge. This section discusses several procedures to satisfy the information needs for sentencing, including the presentence investigation and report, the sentencing hearing, and the diagnostic commitment. It also suggests the need for scientific evaluation of the usefulness of the information contained in presentence reports.

The presentence investigation and report

The statutes or rules of court in about one-quarter of the States make a presentence report mandatory for certain classes of offenses, generally those punishable by imprisonment in excess of one year. In the great majority of States and in the Federal system a request for a presentence report is discretionary with the trial judge, although in some of these States probation may not be granted unless a presentence report has been prepared.

Little information is available on the extent to which presentence reports are actually used in those jurisdictions where they are not mandatory. Data for the Federal courts show that presentence investigations were made in 88 percent of all felony convictions in 1963, and it has been estimated that some form of presentence report is prepared in most felony cases in the country. Studies of individual court systems, however, show that wide variations exist in the thoroughness of the investigation.

Systematic gathering of sentence information is virtually nonexistent in many misdemeanor courts. In Detroit, for example, where probation facilities are available in misdemeanor cases, presentence reports were ordered in only 400 out of more than 12,000 misdemeanor convictions in 1965. The Commission's national corrections survey showed that few misdemeanor courts have probation services available to prepare reports. Whatever background information lower court judges receive before imposing sentence is generally furnished by the police or prosecutor or is elicited from the defendant through a few brief questions. The dangers of incomplete, inaccurate, and misleading presentation is great when this method is used.

The importance of adequate presentence investigation has long been recognized. The National Commission on Law Observance and Enforcement and many of the State crime commissions chartered in the 1920's recommended increased use of presentence reports. More recently the drafters of the Model Penal Code stated that the use and full development of the presentence investigation and report offer the "greatest hope for the improvement of judicial sentencing."

Providing all courts with enough probation officers to prepare presentence reports in all felony and serious misdemeanor cases would impose great burdens on many States, both in terms of financial costs and of the difficulties in obtaining trained personnel. Although all courts should strive to make the fullest use of presentence reports, where resources are inadequate, available manpower should be assigned to cases in which a presentence report is of particular importance. The Model Penal Code represents one attempt to establish priorities for presentence investigations. It provides that presentence reports should be required at least in all cases where the defendant is under 22 years, where he is a first offender, or where there is reasonable likelihood that he will be placed on probation or sentenced to an extended term.

Procedures should be developed to furnish basic sentencing information to the courts in cases where full presentence reports are not prepared, particularly in less serious misdemeanor cases where the limited range of sentencing alternatives makes an extensive background report of little value. Among the facts which appear to be most important are the defendant's prior criminal record, his family status, his educational and employment history, and his financial and physical conditions. These basic facts could be obtained and verified quickly, with the cooperation of the police, prosecutor, defense counsel, and the defendant himself, by a person

who need not possess the qualifications of a probation officer.

The method might resemble the factual investigation of the Manhattan Bail Project. Prior to the bail hearing probation department employees or defender agency representatives interview defendants to obtain information on their personal history and roots in the community. This is verified by telephone calls, and a brief factual summary is provided to defense counsel for use in arguing motions for release on recognizance.

Use of a short form presentence report is at best a temporary step, although it may be dictated by existing manpower and financial problems, by providing a modicum of information the form represents an improvement over existing practice in many courts, but it is only an incremental step toward the goal of full presentence investigation. Its usefulness may be increased by experimentation and development of techniques for identifying facts particularly relevant to the sentencing decision.

A–4 Presentence Investigation (1967)

Source: Task Force on Corrections, The President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Corrections*

Presentence Investigation

At present, the main tool for providing background information for sentencing is the presentence report. This report is prepared in most cases by the probation staff of a court on the basis of investigation and interviews. It seeks to assess the offender's background and present circumstances and to suggest a correctional disposition.

A fully developed presentence investigation usually includes, among other items, an analysis of the offender's motivations, his identification with delinquent values, and his residential, educational, employment, and emotional history. It relates these factors to alternative plans of treatment and explores the resources available to carry out the suggested treatment.

The compilation of the standard presentence report is extemely time-consuming. In addition to the offender himself, numerous persons must be located and interviewed. Records must be secured and verified. The information collected must be discussed and analyzed and recommendations formulated. The Special Committee on Correctional Standards formed to advise the Commission's staff in connection with the National Survey of Corrections concluded that a probation officer could adequately prepare no more than 10 such reports during a month—and that exclusive of any other duties. In fact, in most cases the staff who carry on presentence investigations are also engaged in supervising probationers. Since presentence investigations usually take precedence, the officer may have so little time left the "supervision" may take the form of receiving monthly reports filed by probationers.

The high manpower levels required to comlete reports have caused some authorities to raise questions as to the need for the kind and quantity of information that is typically gathered and presented. These questions are raised particularly with respect to the misdemeanant system, where millions of cases are disposed of each year and relatively few presentence investigations made.

In order to evaluate the information needed in a presentence report, it is important first to take account of the variety of decisions that depend upon it. Besides helping the judge to decide between probation and prison, it also assists him to fix the length and conditions of probation or the term of imprisonment. Beyond these functions, the report is usually the major information source in all significant decisions that follow—in probation programing or institutional handling, in eventual parole decision and supervision, and in any probation and parole revocation.

Not all of these decisions are involved, of course, in every case. Particularly in many misdemeanant cases, where correctional alternatives are usually limited, less information may suffice. Bail projects have developed reporting forms that can be completed and verified in a matter of a few hours and have proven reliable for decisions on release pending trial, which often involve considerations similar to those of ultimate disposition. These forms cover such factos as education and employment status, family and situation, and residential stability. In many lesser cases, these and similar easily obtainable facts may help at least to determine whether more detailed investigation or diagnostic processes are needed. Much information of this kind can also be collected by nonprofessional personnel under the supervision of trained correctional staff. There is also a need for development of information systems that can provide more rapid and reliable access to records.

Experimentation with new and simpler forms of presentence investigation is important for reasons beyond the conservation of scarce resources of probation offices. Presentence reports in many cases have come to include a great deal of material of doubtful relevance to disposition in most cases. The terminology and approach of reports vary widely with the training and outlook of the persons preparing them. The orientation of many probation officers is often reflected in, for example, attempts to provide in all presentence reports comprehensive analyses of offenders, including extensive descriptions of their childhood experiences. In many

cases this kind of information is of marginal relevance to the kinds of correctional treatment actually available or called for. Not only is preparation time-consuming, but its inclusion may confuse decision-making.

A-5 Sentencing Procedures (1967)

Source: The President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society*

Sentencing Procedures

Although the criminal trial on the issue of guilt is a strictly formal procedure, the determination of what is to be done with a convicted offender is often a rather informal one. A judge, when he sentences needs facts about the offender and his offense. Both will be absent in those many instances when conviction has resulted from a plea of guilty and the court lacks, or has inadequate facilities for preparing, presentence reports. The judge then must rely on the necessarily incomplete and biased oral statements of the prosecutor, defense counsel, and defendant. Such statements may be supplemented by a "rapsheet," a 1-page record of the offender's prior criminal involvements.

In most felony courts presentence reports are prepared, but they are of uneven quality and usefulness. One almost universal problem is that the probation officers who prepare them have more work than they can effectively do. They often have as many as 100 offenders on probation to supervise, besides preparing reports. Another problem is that the pay, recruitment, and training standards for probation officers are often low, and the officers are not equipped to evaluate the information they receive in the course of their investigations.

Most misdemeanor courts do not require presentence reports. In the case of the majority of misdemeanants full field investigations by trained probation officers may not be called for. However, some relevant information should be provided to the sentencing judge, perhaps no more than is obtained by the use of the kind of short form that was described in this chapter's discussion of bail.

Many misdemeanor courts have no probation services at all. In such courts a sentence of probation is in effect an unconditional release, except that the offender can be later jailed for his offense if a violation of his probation comes to the attention of the court as the result of his being arrested on another charge. This has led to the paradoxical situation that a smaller proportion of misdemeanor offenders receive probation than do felony offenders, who have committed more serious crimes.

The Commission recommends:

All courts, felony and misdemeanor, should have probation services. Standards for the recruitment and training of probation officers should be set by the States, and the funds necessary to implement this recommendation should be provided by the States to those local courts that cannot finance probation services for themselves. All courts should require presentence reports for all offenders, whether those reports result from full field investigations by probation officers or, in the case of minor offenders, from the use of short forms.

Fairness to the defendant requires that he be given a reasonable opportunity to present information to the court and to contest the accuracy of important factual statements in the presentence report or other material presented to the court. Gossip often finds its way into presentence reports, and without disclosure there is often no way of counteracting its effects. The issue whether the presentence report itself should be disclosed to the defendant and his counsel has been the subject of considerable debate, and disclosure at the present time is generally a matter of judicial discretion, although in five States disclosure is required by statute.

In many cases information clearly could be disclosed without substantial likelihood of harm; yet there can be circumstances in which the particularly confidential nature of the source of the information may preclude its disclosure, or in which disclosure of a statement would be harmful to rehabilitation. Presentence reports sometimes rely upon the records of social, welfare, and juvenile agencies that are required to keep their records confidential; such agencies might stop providing information if disclosure were compelled. In other cases the person who provided certain information might be easily identified by the offender and, if the information is unfavorable, that person might be endangered. However, the experience of the courts where disclosure is a matter of routine indicates

that such problems can be solved by the proper exercise of judicial discretion.

The Commission recommends:

In the absence of compelling reasons for nondisclosure of special information, the defendant and his counsel should be permitted to examine the entire presentence report.

A-6 The Presentence Report (1970)

Source: American Bar Association, *Standards Relating to Probation*

PART II. THE PRESENTENCE REPORT

2.1 Availability and use.

(a) All courts trying criminal cases should be supplied with the resources and supporting staff to permit a presentence investigation and a written report of its results in every case.

(b) The court should explicitly be authorized by statute to call for such an investigation and report in every case. The statute should also provide that such an investigation and report should be made in every case where incarceration for one year or more is a possible disposition, where the defendant is less than [21] years old, or where the defendant is a first offender, unless the court specifically orders to the contrary in a particular case.

2.2 Purpose of report.

The primary purpose of the presentence report is to provide the sentencing court with succinct and precise information upon which to base a rational sentencing decision. Potential use of the report by other agencies in the correctional process should be recognized as a factor in determining the content and length of the report, but should be subordinated to its primary purpose. Where the presentence investigation discloses information useful to other correctional agencies, methods should be developed to assure that this data is made available for their use.

2.3 Content, scope and length of report.

Presentence reports should be flexible in format, reflecting differences in the background of different offenders and making the best use of available resources and probation department capabilities. Each probation department should develop gradations of reports between:

(i) A short-form report for primary use in screening offenders in order to assist in a determination of when additional and more complete information is desirable. Short-form reports could also be useful in courts which do not have adequate probation services;

(ii) A full report, which normally should contain the following items:

(A) a complete description of the offense and the circumstances surrounding it, not limited to aspects developed for the record as part of the determination of guilt;

(B) a full description of any prior criminal record of the offender;

(C) a description of the educational background of the offender;

(D) a description of the employment background of the offender, including any military record and including his present employment status and capabilities;

(E) the social history of the offender, including family relationships, marital status, interests and activities, residence history, and religious affiliations;

(F) the offender's medical history and, if desirable, a psychological or psychiatric report;

(G) information about environments to which the offender might return or to which he could be sent should probation be granted;

(H) supplementary reports from clinics, institutions and other social agencies with which the offender has been involved;

(I) information about special resources which might be available to assist the offender, such as treatment centers, residential facilities, vocational training services, special educational facilities, rehabilitative programs of various institutions to which the offender might be committed, special programs in the probation department, and other similar programs which are particularly relevant to the offender's situation;

(J) a summary of the most significant aspects of the report, including specific recommendations as to the sentence if the sentencing court has so requested.

A special effort should be made in the preparation of presentence reports not to burden the court with irrelevant and unconnected details.

2.4 When prepared.

(a) Except as authorized in subsection (b), the presentence investigation should not be initiated until there has been an adjudication of guilt.

(b) It is appropriate to commence the presentence investigation prior to an adjudication of guilt only if:

(i) the defendant, with the advice of counsel if he so desires, has consented to such action; and

(ii) adequate precautions are taken to assure that nothing disclosed by the presentence investigation comes to the attention of the prosecution, the court, or the jury prior to an adjudication of guilt. The court should be authorized, however, to examine the report prior to the entry of a plea on request of the defense and prosecution.

2.5 Availability of report; challenge of its contents.

Standards dealing with the disclosure of the presentence report and the resolution of controversy as to its accuracy are developed in the separate report of this Advisory Committee on Sentencing Alternatives and Procedures.

A-7 Presentence Investigation (1972)

Source: National Council on Crime and Delinquency, *Model Sentencing Act* (1972 Revision)

§ 2. WHEN INVESTIGATION MADE

After a defendant is convicted of a crime the sentence for which may include commitment for more than six months, or when the judge is considering probation without conviction as provided in section 9, a written report of investigation by the probation officer shall be presented to and considered by the judge before he imposes the sentence or probation without conviction.

The Judge may, in his discretion, order a presentence investigation for a defendant convicted of any lesser crime or offense. The court shall make rules as to the exercise of such discretion.

If the defendant was at large on bail or recognizance before conviction, he shall be continued on bail or recognizance until the sentencing hearing unless the judge finds that, upon conviction, the defendant if released is not likely to appear at the hearing or is likely to commit another crime.

§ 3. CONTENT OF INVESTIGATION: COOPERATION OF AGENCIES

Whenever an investigation is required, the probation officer shall promptly inquire into the characteristics, circumstances, needs, and potentialities of the defendant; his criminal record and social history; the circumstances of the offense, the time the defendant has been in detention; and the harm to the victim, his immediate family, and the community. A physical and mental examination of the defendant shall be included in the investigation when ordered by the judge where it is indicated by the defendant's behavior or by other good cause shown, as provided by rules of court.

All local and state institutions, courts, and police and other agencies shall furnish to the probation officer on request the defendant's criminal or other record and all other revelant information.

When the court imposes its sentence, it shall correct any errors in the presentence investigation.

§ 4. AVAILABILITY OF REPORT TO DEFENDANT AND OTHERS

The presentence investigation and any supporting reports, including diagnostic reports and the probation officer's recommendation where the judge has required or allowed a recommendation to be made, shall be made available to the attorney for the state and to the defendant and his attorney in advance of the hearing on the sentence, provided that, pursuant to rules of the court the identity of the informant or information leading to his identity may be withheld if his security or the security of a vital family relationship would be endangered by the disclosure.

The investigation and supporting reports shall be part of the record but shall be sealed and opened only on order of the court.

A–8 Requirements for Presentence Report and Content Specification (1973)

Source: National Advisory Commission on Criminal Justice Standards and Goals, *Corrections* (Standard 5.14)

Requirements for Presentence Report and Content Specification

Sentencing courts immediately should develop standards for determining when a presentence report should be required and the kind and quantity of information needed to insure more equitable and correctionally appropriate dispositions. The guidelines should reflect the following:

1. A presentence report should be presented to the court in every case where there is a potential sentencing disposition involving incarceration and in all cases involving felonies or minors.

2. Gradations of presentence reports should be developed between a full report and a short-form report for screening offenders to determine whether more information is desirable or for use when a full report is unnecessary.

3. A full presentence report should be prepared where the court determines it to be necessary, and without exception in every case where incarceration for more than 5 years is a possible disposition. A short-form report should be prepared for all other cases.

4. In the event that an offender is sentenced, either initially or on revocation of a less confining sentence, to either community supervision or total incarceration, the presentence report should be made a part of his official file.

5. The full presentence report should contain a complete file on the offender—his background, his prospects of reform, and details of the crime for which he has been convicted. Specifically, the full report should contain at least the following items:

a. Complete description of the situation surrounding the criminal activity with which the offender has been charged, including a full synopsis of the trial transcript, if any; the offender's version of the criminal act; and his explanation for the act.

b. The offender's educational background.

c. The offender's employment background, including any military record, his present employment status, and capabilities.

d. The offender's social history, including family relationships, marital status, interests, and activities.

e. Residence history of the offender.

f. The offender's medical history and, if desirable, a psychological or psychiatric report.

g. Information about environments to which the offender might return or to which he could be sent should a sentence of nonincarceration or community supervision be imposed.

h. Information about any resources available to assist the offender, such as treatment centers, residential facilities, vocational training services, special educational facilities, rehabilitative programs of various institutions, and similar programs.

i. Views of the person preparing the report as to the offender's motivations and ambitions, and an assessment of the offender's explanations for his criminal activity.

j. A full description of defendant's criminal record, including his version of the offenses, and his explanations for them.

k. A recommendation as to disposition.

6. The short-form report should contain the information required in sections 5 a, c, d, e, h, i, and k.

7. All information in the presentence report should be factual and verified to the extent possible by the preparer of the report. On examination at the sentencing hearing, the preparer of the report, if challenged on the issue of verification, should bear the burden of explaining why it was impossible to verify the challenged information. Failure to do so should result in the refusal of the court to consider the information.

Commentary

Presentence reports are precisely what the name implies: reports written prior to sentence to inform the judge of what may be pertinent facts concerning the offender, his past, and his potential for the future. The purpose is to provide a range of evaluative and descriptive information and considerations the judge could not possibly obtain in mere courtroom exposure to the offender. Such informa-

tion is essential if the decision is to be a knowledgeable one.

Some State statutes specifically require presentence reports for certain classes of convicted defendants, such as felons, but most do not. In the latter jurisdictions, the percentage of courts and of judges within those courts using such reports varies greatly. Federal courts appear to be the most consistent users, with presentence reports being prepared in almost 90 percent of the cases.

The importance of the presentence report to informed decisionmaking in sentencing led the drafters of the Model Penal Code to require such reports in most instances. The American Bar Association disagreed, however, pointing out that there were some instances in which it would provide no useful information beyond that already available to the court.

The standard accommodates both views. In simple cases, extensive presentence reports are a waste of resources. The standard thus provides that short-form reports should be prepared in most instances, with the court authorized to insist on a long report where it deems this necessary.

Requirement of the standard for a full presentence report when the possible sentence exceeds 5 years is consistent with the provisions of the Model Sentencing Act and the Model Penal Code. It seems reasonable to require that the court be fully informed in such instances.

The kind and quality of information to be included in a presentence report will vary with its use and the nature of the decisions depending upon it. Most authorities, however, agree on the basic content requirements. The requirements for both the full presentence investigation and the simpler short-form report are put forth in the standard.

The standard strongly urges verification, wherever possible, of information contained in a presentence report. The need for verification cannot be denied. The law books are bulging with cases in which a factually erroneous presentence report has led to imposition of a harsher sentence than otherwise would have been handed down.

References

1. Evjen, Victor H. "Some Guidelines in Preparing Presentence Reports," *Federal Rules Decisions,* 37 (1964), 177.

2. Sharp, Louis J. "The Presentence Report," *Federal Rules Decisions,* 30 (1962), 242.

Related Standards

The following standards may be applicable in implementing Standard 5.14.

5.2 Sentencing the Nondangerous Offender.

5.3 Sentencing to Extended Terms.

5.19 Imposition of Sentence.

16.10 Presentence Reports.

A-9 Preparation of Presentence Report Prior to Adjudication (1973)

Source: National Advisory Commission on Criminal Justice Standards and Goals, *Corrections* (Standard 5.15)

Preparation of Presentence Report Prior to Adjudication

Sentencing courts immediately should develop guidelines as to the preparation of presentence reports prior to adjudication, in order to prevent possible prejudice to the defendant's case and to avoid undue incarceration prior to sentencing. The guidelines should reflect the following:

1. No presentence report should be prepared until the defendant has been adjudicated guilty of the charged offense unless:

a. The defendant, on advice of counsel, has consented to allow the investigation to proceed before adjudication; and

b. The defendant presently is incarcerated pending trial; and

c. Adequate precautions are taken to assure that nothing disclosed by the presentence investigation comes to the attention of the prosecution, the court, or the jury prior to adjudication.

2. Upon a showing that the report has been available to the judge prior to adjudication of guilt, there should be a presumption of prejudice, which the State may rebut at the sentence hearing.

Commentary

Preparation of a presentence report is time-consuming and may require several weeks of investigation, information-gathering, and analysis. During this period, the defendant may be held in detention waiting for completion of a report that may suggest probation. To avoid this, probation offices often conduct investigations prior to the determination of guilt, always with the consent of the defendant. The practice, of course, raises fears that the court may see the report before guilt is determined and be influenced by the information it contains. Rule 32 of the Federal Rules of Criminal Procedure, specifically provides that the trial judge shall not be given the presentence report prior to the time the jury returns with its verdict.

This standard accepts the practice of preadjudication investigation but rejects a recent position of the Supreme Court that the burden should fall to the defendant to demonstrate prejudice if the report has or might have been read by the adjudicating judge prior to the determination of guilt. The Commission's position seems appropriate because: (1) the defendant does not really have the knowledge necessary to demonstrate prejudice; and (2) the practice of reading these reports prior to guilt adjudication is apparently so widespread that steps must be taken to stop it, since the danger of prejudice, particularly to undereducated and disadvantaged defendants, is rather obvious.

However, the idea of preparing a report in advance is a good one, particularly since it may allow the defendant to obtain a sentence of nonincarceration or community supervision shortly after his guilt is adjudicated. This avoids the unseemly final rush to avoid removing the offender from the community for the few days between adjudication and sentence.

The economics are sufficiently encouraging: approximately 97 percent of those defendants who agreed to this practice in the Federal system either pleaded or were found guilty. Since the standard itself restricts the advance preparation of these reports to defendants who presently are incarcerated, preparation of the report prior to guilt adjudication may be a distinct benefit to him in terms of removal from a local jail facility. This benefit would seem to outweigh the possible inconvenience to the investigative department.

References

1. Note, *Georgetown Law Journal,* 58 (1960), 451.

2. Note, *Washington University Law Quarterly,* (1964), 396.

Related Standards

The following standards may be applicable in implementing Standard 5.15.

5.16 Disclosure of Presentence Report.

5.17 Sentencing Hearing—Rights of Defendant.

16.10 Presentence Reports.

A–10 Disclosure of Presentence Report (1973)

Source: National Advisory Commission on Criminal Justice Standards and Goals, *Corrections* (Standard 5.16)

Disclosure of Presentence Report

Sentencing courts immediately should adopt a procedure to inform the defendant of the basis for his sentence and afford him the opportunity to challenge it.

1. The presentence report and all similar documents should be available to defense counsel and the prosecution.

2. The presentence report should be made available to both parties within a reasonable time, fixed by the court, prior to the date set for the sentencing hearing. After receipt of the report, the defense counsel may request:

a. A presentence conference, to be held within the time remaining before the sentencing hearing.

b. A continuance of one week, to allow him further time to review the report and prepare for its rebuttal. Either request may be made orally, with notice to the prosecutor. The request for a continuance should be granted only:

(1) If defense counsel can demonstrate surprise at information in the report; and

(2) If the defendant presently is incarcerated, he consents to the request.

Commentary

Whether the contents of presentence reports should be revealed to defendant or his counsel has been a continuing subject of debate by judges and criminologists for more than a quarter of a century. Those opposing disclosure point to the possible "drying up" of sources from whom confidential information supposedly is obtained; the possible "dragging out" of sentencing with an "acrimonious, often pointless," adversary proceeding; the undermining of the relationship between defendant and his ultimate probation officer, if the officer originally recommends some incarceration; and possible psychological damage to the defendant.

Those favoring disclosure respond by saying that there is no "drying up" in those districts where disclosure now is made; that the spectacle of a court relying on "hidden information" that turns out to be erroneous, as in *Townsend* v. *Burke,* 334 U.S.736 (1948), cannot be tolerated; that the main sources for the information are the defendant himself and the "public records"; and that there is need for assurance that the report correctly interprets the information gathered.

All three recent studies of sentencing have dealt with the issue. The Model Sentencing Act does not make disclosure mandatory in the ordinary case, but it is mandatory where the sentence is for more than 5 years for the so-called "dangerous" offender. The Model Penal Code provides that the court "shall advise the defendant or his counsel of the factual contents and the conclusions of any [investigation] . . ." The American Bar Association's *Standards Relating to Sentencing Alternatives and Procedures* (Sec. 4.4) suggests that the report should be available for inspection by the defendant or his attorney but allows exclusion of some parts of the report "which are not relevant to a proper sentence . . . diagnostic opinion which might seriously disrupt a program of rehabilitation, or sources of information which has been obtained on a promise of confidentiality."

Courts are similarly divided, although most seem to agree that disclosure is not constitutionally required. Some States statutorily require disclosure, but the vast majority leave disclosure entirely within the judge's discretion. The current practice among such courts is mixed.

This standard, consistent with the view that the sentencing procedure should be a major step toward reintegrating the offender into the society, adopts the position of requiring full disclosure, without exceptions as to confidentiality. Several reasons prompt this decision.

First, if the offender is to be convinced that his reintegration into society is desirable, he must be convinced that the society has treated him fairly. If he is sentenced on information he has not seen or had any chance to deal with and rebut, he cannot believe that he has been treated with impartiality and justice.

Second, the argument that sources may "dry up" is unconvincing. Two thoughts compel this conclusion: (1) those jurisdictions which have required disclosure have not experienced this phenomenon; and (2) more importantly, if this same evidence were given as testimony at trial, there would be no protection or confidentiality. Concepts of fair trial require that all such information be brought forward in open court and subjected to cross-examination and scrutiny. There is no reason to require less in the sentencing procedure, where the offender's liberty is at stake.

A third fear of those opposing disclosure is that certain information may be damaging to the envisioned relationship between offender and probation officer. Two observations seem appropriate here:

1. If complete candor is required for such a relationship, avoidance of disclosure surely begins the relationship on the wrong foot.

2. The less drastic alternative, recommended in the chapter on probation, is to separate the function of presentence report preparation and the supervision and treatment role of the probation officer.

This standard also discusses the timing of disclosure, recommending that defense counsel be afforded a reasonable time in which to verify the facts and garner his materials. If the report contains material unknown to the counsel, he may request a continuance of a week, unless his client presently is incarcerated and does not agree to the continuance.

The purpose of disclosure is to allow the defense counsel to prepare rebuttal. If, however, there is no major disagreement over the salient facts in the report, it may be wise to provide, as does the ABA provision from which this standard is drawn, for a presentence conference. Similar conferences have been used in Alabama, for example, with beneficial effect. These conferences, however, should be held at the discretion of the court; their primary purpose should be to save time.

If defense counsel requests a presentence conference, it should be granted if there appears to be a substantial possibility of obtaining stipulations as to most facts concerning the defendant and the report; otherwise, the request should be denied. A record of the resolution of any issue at such a conference should be preserved for inclusion in the record of the sentencing proceeding.

References

1. Hincks, Carroll C. "In Opposition to Rule 34(c) (2), Proposed Federal Rules of Criminal Procedure," *Federal Probation,* 8 (1944), 3.

2. Katkin, Daniel. "Presentence Reports: An Analysis of Uses, Limitations and Civil Liberties Issues," *Minnesota Law Review,* 55 (1970), 736.

3. Lorenson, Willard D. "The Disclosure to Defense of Presentence Reports in West Virginia," *West Virginia Law Review,* 69 (1967) 159.

4. Note, *Columbia Law Review,* 55 (1958), 702.

5. Parsons, James B. "The Presentence Investigation Report Must be Preserved as a Confidential Document," *Federal Probation,* 30 (1964), 3.

6. Sharp, Louis J. "The Confidential Nature of Presentence Reports," *Catholic University Law Review,* 5 (1956), 127.

7. Stanley, Edwin. Dissent from the ABA sentencing standards recommendation, in American Bar Association Project on Standards for Criminal Justice, *Standards Relating to Sentencing Alternatives and Procedures.* New York: Office of the Criminal Justice Project, 1968. Pp. 303–305.

8. Zastrow, William G. "Disclosure of the Presentence Investigation Report," *Federal Probation,* 35 (1971), 20.

A-11 Sentencing Hearing—Rights of Defendant (1973)

Source: National Advisory Commission on Criminal Justice Standards and Goals, *Corrections* (Standard 5.17)

Sentencing Hearing—Rights of Defendant

Sentencing courts should adopt immediately the practice of holding a hearing prior to imposition of sentence and should develop guidelines for such hearing reflecting the following:

1. At the hearing the defendant should have these rights:

a. To be represented by counsel or appointed counsel.

b. To present evidence on his own behalf.

c. To subpena witnesses.

d. To call or cross-examine the person who prepared the presentence report and any persons whose information, contained in the presentence report, may be highly damaging to the defendant.

e. To present arguments as to sentencing alternatives.

2. Guidelines should be provided as to the evidence that may be considered by the sentencing court for purposes of determining sentences, as follows:

a. The exclusionary rules of evidence applicable to criminal trial should not be applied to the sentencing hearing, and all evidence should be received subject to the exclusion of irrelevant, immaterial, or unduly repetitious evidence. However, sentencing decisions should be based on competent and reliable evidence. Where a person providing evidence of factual information is reasonably available, he should be required to testify orally in order to allow cross-examination rather than being allowed to submit his testimony in writing.

b. Evidence obtained in violation of the defendant's constitutional rights should not be considered or heard in the sentence hearing and should not be referred to in the presentence report.

c. If the court finds, after considering the presentence report and whatever information is presented at the sentence hearing, that there is a need for further study and observation of the defendant before he is sentenced, it may take necessary steps to obtain that information. This includes hiring of local physicians, psychiatrists, or other professionals; committing the defendant for no more than 30 days to a local or regional diagnostic center; and ordering a more complete investigation of the defendant's background, social history, etc.

Commentary

This standard would give the defendant those rights the Supreme Court has considered "fundamental" whenever "grievous loss" might be inflicted upon a person by a governmental agency. Some of these rights—such as hearing and counsel—already have been recognized in the sentencing arena. Others have not yet been accorded constitutional status.

The right to present witnesses on one's own behalf seems to be such an essential ingredient of fairness that it scarcely needs justification. Although there is no clear holding from the court that allocution is constitutionally required, the Federal Rules of Criminal Procedure require it, and so do most, if not all, States. The ability to present witnesses is simply an extension of that right.

The right to rebut, however, goes beyond the right of allocution. The casebooks are replete with instances in which information in presentence reports has been erroneous, but the defendant has had no opportunity to challenge or rebut the material in it. The key case is *Townsend* v. *Burke,* 334 U.S. 736 (1948), in which the Court held that it was a violation of due process for the sentencing court to rely on erroneous information in sentencing a defendant who was without counsel. The opinion was vague, and it was not clear whether the absence of counsel was a determining factor in the Court's decision. However, at that time appointed counsel was not required in such felony cases. Furthermore, the Court declared that:

> In this case, counsel might not have changed the sentence, but he could have taken steps to see that the conviction and sentence were not predicated on misinformation or misreading of court records, a requirement of fair play which absence of counsel withheld from this prisoner.

It is difficult to see how counsel could have taken such action without information before him

upon which to determine that the judge was misinformed; thus, the *Townsend* decision strongly implied that there is both a right to present witnesses at a sentencing procedure and perhaps even to subpena witnesses. The latter ability would appear to be necessary if the hearing is to be fair and comprehensive.

Examples of erroneous or questionable material contained in a presentence report are numerous. One of the most notorious cases in this regard is *United States* v. *Weston,* 448 F.2d 626 (9th Cir. 1971), in which the defendant was convicted of receiving, concealing, and facilitating the transportation of heroin. Prior to reading the presentence report, the trial judge announced his inclination to impose the minimum permissible sentence. Yet the defendant ultimately received the maximum sentence—four times greater than the minimum. The change in attitude was prompted by a statement in the report that the Federal Bureau of Investigation felt that "she has never used [heroin] but has been the chief supplier to the Western Washington [State] area." Although the trial judge advised defense counsel of the basic content of this information, the report itself was not disclosed.

On appeal, the Ninth Circuit reversed, and remanded, stating that:

1. The government had the burden of proving this allegation;
2. The entire presentence report should be disclosed; and
3. The current information in the report in no way substantiated the allegation.

The sentencing hearing is not to be considered a trial, and purposeful delaying tactics should not be tolerated by the trial judge. The sentencing hearing should allow sufficient opportunity for the defendant to know the allegations and information raised against him and to have an equitable chance to respond.

The constitutional requirements governing the procedures at sentencing hearings stem from *Williams* v. *New York,* 337 U.S. 241 (1949), in which the Supreme Court validated the use of hearsay evidence contained in a presentence report and information received out of court and thus not subject to challenge by the defendant. The *Williams* case was a particularly difficult decision since it involved a sentence of death by the judge who ignored the jury's recommendation for life imprisonment. Since *Williams,* the court has imposed a requirement that defendants be represented by counsel during sentencing proceedings.

The standard goes beyond the *Williams* decision. It is not, however, an attempt to prophesy what future courts may determine due process requires but rather to resolve issues related to effective sentencing. It is true that the sentencing process involves fine and delicate judgments about an offender; courts often are apprised of information directed toward sentence that would be inadmissible on the issue of guilt.

The standard does not recommend that all of the exclusionary evidence rules regulating the flow of testimony in the criminal trial be made applicable to sentencing proceedings. However, the decisions regarding the imposition of sentences are not unlike the type of judgments made by regulatory administrative agencies both at the Federal and State level. They are based on opinion, judgments, expertise, and factual information. The Federal Administrative Procedure Act, which governs hearings of Federal administrative agencies, authorizes all evidence to be admitted other than what is irrelevant, immaterial, or unduly repetitious. The standard recommends the same for sentencing.

In addition, the structure of sentencing envisioned in these standards, with statutory criteria and the requirement for findings of fact and articulated reasons for the imposition of a particular sentence, dictates that judicial decisions be based on competent and reliable factual bases. Thus, while almost any information is admissible in the sentencing proceeding, the eventual decision should have an adequate factual foundation.

One aspect of the *Williams* case runs contrary to many of the standards recommended in this chapter. In that case, the defendant was not allowed to confront and cross-examine the probation officer who filed the presentence report. There was no evidence that he was unavailable to testify. If sentencing decisions are to be based on reliable information and are to be seen from the offender's perspective as fairly arrived at, the offender should be entitled to challenge information used to his detriment, including cross-examination where that is reasonable. The standard recommends that, although hearsay information may be admitted, where the person providing the information is reasonably available, he should testify personally in open court. The Supreme Court recently held in *Morrissey* v. *Brewer,* 408 U.S. 471 (1972), that a pa-

rolee is entitled to confront and cross-examine witnesses against him when his parole is revoked. This decision and those requiring counsel at sentencing hearings may forecast a constitutional requirement of this magnitude.

The standard also deals explicitly and directly with an issue which has arisen lately in several court decisions. In *Schipani* v. *United States,* 315 F. Supp. 253 (E.D. N.Y.), *aff'd.,* 435 F. 2d 26 (2d Cir. 1970), a Federal court held that evidence seized in violation of a defendant's fourth amendment rights nevertheless could be admitted as evidence against him in the sentencing procedure. The court gave several reasons for its holding, but the prime thought was that deterrence of unconstitutional police conduct—which the court saw as the prime purpose of the fourth amendment—had been served by the first exclusion of the evidence from the defendant's trial and that forbidding its use a second time would not further deter police misconduct.

There is some reason to doubt the validity of the court's reasoning even if one assumes that the purpose of the fourth amendment is, in fact, to deter police malfeasance. But the premise is wrong. The fourth amendment protects individuals from invasions of their privacy and courts from being tainted by the use of unconstitutionally obtained evidence. The integrity of the judiciary is compromised when it bases its decisions on materials found in violation of the Constitution.

The final provision of the standard allows the court to use any existing resources to obtain further information about the defendant. The provision is patterned after the ABA recommendation, which in turn is based upon the provisions of several State and the Federal courts. Use of a period during which the defendant can be observed by trained professionals who can better assess his capabilities and suggest a program of social reintegration is a salutary measure, which again focuses on the individualization of the sentence. The standard recognizes that some courts will not have resources available to perform these services, and therefore allows the court to appoint local professionals to conduct such information-gathering as they can.

References

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5. Note, *University of Pennsylvania Law Review,* 101 (1952), 257.

6. Simpson, Bryan. "Utilization of the Presentence Report and Other Presentence Resources." *Federal Rules Decisions,* 30 (1961), 247.

Related Standards

The following standards may be applicable in implementing Standard 5.17.

5.16 Disclosure of Presentence Report.

5.18 Sentencing Hearing—Role of Counsel.

A–12 Presentence Reports (1973)

Source: National Advisory Commission on Criminal Justice Standards and Goals, *Corrections* (Standard 16.10)

Presentence Reports

Each State should enact by 1975 legislation authorizing a presentence investigation in all cases and requiring it:

1. In all felonies.

2. In all cases where the offender is a minor.

3. As a prerequisite to a sentence of confinement in any case.

The legislation should require disclosure of the presentence report to the defendant, his counsel, and the prosecutor.

Commentary

Judicial sentencing with discretionary power to select from a number of alternatives contemplates that the court's judgment be founded on relevant information. Although the trial itself may provide some information, other information relating directly to sentencing decisions may be precluded from the trial. Likewise, the vast majority of cases result in guilty pleas with no presentation of evidence.

The presentence investigation, in many States conducted by a probation officer or other officer of the court, is designed to provide the basis for the sentencing decision. State statutes vary regarding the extent to which these investigations are required prior to sentencing. In some States, such as California, a report is required in all felony cases. In most States, the presentence report is discretionary with the trial court.

The presentence report has traditionally been viewed as a device providing justification for probation or other sentences not involving confinement. In a few States, reports are mandatory prior to the selection of probation as the sentencing alternative. It is more appropriate, in light of other standards requiring affirmative justification for incarceration, to regard the report as necessary for a sentence of incarceration. The proposed standard suggests that no sentence of confinement be imposed without a presentence report.

The major restraint to the utilization of presentence reports in all cases is lack of resources. Courts today may be reluctant to allocate resources to presentence investigations that otherwise would be spent in supervising pretrial releases or probationers.

The entire scheme of judicial discretion in sentencing is subverted if adequate investigation is not provided. Discretion is based on individualizing correctional programming, which cannot be done without individualized information. In many jurisdictions, presentence reports are only made in felony cases. The Commission feels that presentence reports are also essential where the individual is a minor or where incarceration is a possibility.

The issue of whether the presentence report should be disclosed to the defendant or his counsel has caused extended controversy. Opponents to disclosure argue that sources of information will become unavailable because of the lack of confidentiality, disclosure will unduly prolong the sentencing proceedings, and that disclosure may, in some cases, inhibit the offender's participation in correctional programs.

Factual information is important as a basis for sentencing decisions. The contents of the report may determine whether the offender is placed on probation or suffers extended confinement. To the offender, it is the decision next in importance to the determination of guilt. Unless he is given the opportunity to contest information in the presentence report, the entire sentencing decision becomes suspect and indefensible.

A number of States presently authorize or require the disclosure of the presentence report. See, for example, California Penal Code Sec. 1203 (1966 Supp.) and Minnesota Statutes Annotated Sec. 609.115. The Model Penal Code requires disclosure of the "factual contents and the conclusions" of the report but protects the confidentiality of the sources of the information. MPC Sec. 7.07(5). The American Bar Association standards authorize in exceptional cases withholding parts of the report not "relevant to a proper sentence," diagnostic opinion which might seriously disrupt rehabilitation, and sources of information obtained in confi-

dence. An occasional appellate court has also ruled that defendants are entitled to see the presentence report. In *State* v. *Kunz,* 55 N.J. 128, 259 A. 2d 895 (1969), the New Jersey Supreme Court ordered all New Jersey courts to grant disclosure as a matter of "rudimentary fairness." In areas where reports are disclosed, the fears of those opposed to the practice have generally been shown to be unfounded.

References

1. American Bar Association Project on Standards for Criminal Justice. *Standards Relating to Probation.* New York: Office of the Criminal Justice Project, 1970, and authorities cited therein.

2. American Bar Association Project on Standards for Criminal Justice. *Standards Relating to Sentencing Alternatives and Procedures.* New York: Office of the Criminal Justice Project, 1968.

3. American Law Institute. *Model Penal Code: Proposed Official Draft.* Philadelphia: ALI, 1962, Sec. 707.

4. *Legislative Guide for Drafting State-Local Programs on Juvenile Delinquency.* Washington: U.S. Department of Health, Education, and Welfare, 1972.

5. President's Commission on Law Enforcement and Administration of Justice. *Task Force Report: The Courts.* Washington: Government Printing Office, 1967.

6. *State* v. *Kunz,* 55 N.J. 128, 259, A.2d 895 (1969).

7. Zastrow, William G. "Disclosure of the Pre-Sentence Investigation Report," *Federal Probation,* 30 (1971), 20.

Related Standards

The following standards may be applicable in implementing Standard 16.10.

5.14 Requirement for Presentence Report and Content Specification.

5.15 Preparation of Presentence Report Prior to Adjudication.

5.16 Disclosure of Presentence Report.

APPENDIX B

LETTER REQUESTING DATA ON PRESENTENCE PRACTICE

UNIVERSITY JUSTICE ASSOCIATES
4929 WILSHIRE BOULEVARD, SUITE 1050
LOS ANGELES, CALIFORNIA 90010
(213) 933-8260

Project: Presentence Report Handbook
Dr. Sol Kobrin, Director

Project: Probation and Parole Programs
Dr. E. Kim Nelson, Director

BILLING ADDRESS:
Fiscal Officer
University Justice Associates
1007 - 7th Street, Suite 406
Sacramento, California 95814

May 28, 1976

SUBJECT: PRESENTENCE REPORT HANDBOOK

The Law Enforcement Assistance Administration (LEAA), through its National Institute of Law Enforcement and Criminal Justice, has contracted with University Justice Associates, a California non-profit corporation, to prepare a prescriptive package on the presentence report. More precisely, the requirement is for a prescriptive package which addresses "the kinds and quantity of information needed in a presentence report to insure more equitable and correctionally appropriate dispositions." The emphasis is on adult presentence reports.

As we begin to develop the prescriptive package, it is clear and unequivocal that data and judgments from probation agencies are essential if the presentence prescriptive package is to make any sense and be of any use. Therefore, and although we are somewhat reluctant to impose additional burdens on operational agencies, we would ask the following of you:

1. If available, we would be most appreciative of receiving (a) a copy of that portion of your agency "SOP" which pertains to the presentence report process and

(b) a copy of a "typical" adult presentence report (with names or other identifiers deleted). What we are trying to determine here is the current practice in the field: SOP's and a "real" example should be both illuminating and illustrative.

2. We also seek your commentary as to changes in the entire presentence report process including the report itself which would facilitate judicial decision making, probation officer supervision of probationers or perhaps even improve classification efforts in correctional institutions on those offenders who were denied probation and were committed to institutions. As a question, we ask what needs to be done to make the presentence process and the presentence report "better?"

3. Finally, we recognize that there is some controversy in the presentence area and accordingly we solicit your response on issues such as confidentiality of presentence reports, the making of specific sentencing recommendations to the court, the use of non-professionals (volunteers/para-professionals) to do some of the presentence work, or anything else which is of concern to you and your colleagues.

Again, we recognize the burdens placed upon operational agencies by these kinds of requests and surveys, but we also recognize our own limitations. There must be a reality to our final report and that can only occur with agency inputs. Thank you in advance for your cooperation.

Very truly yours,

Robert M. Carter

RMC:pb

cc: Law Enforcement Assistance Administration (NILE & CJ)

APPENDIX C

POSSIBLE SUBJECT AREAS (MODULES) OF INFORMATION FOR DESIGN OF MULTIPLE PRESENTENCE REPORTS FORMAT AND CONTENTS

C–1 Legal Chronology and Related Data

A. Legal Chronology and Legal Data

Date of Offense
Place of Offense
Date of Arrest
Place of Arrest
Where Detained
Date(s) of Detention; Number of Days Detained
Date Released
    Own Recognizance
    To Pretrial Service Agency
    On Bond
    Amount of Bond
Date of Initial Court Appearance
Date Complaint Filed
Date Attorney Appointed/Obtained
Name and Address of Attorney
Date of Preliminary Hearing
Date of Arraignment
Date of Plea
Nature of Plea
Date of Trial
Date of Verdict
Nature of Verdict
Date Referred to Probation Officer
Date of Sentencing Hearing
Date of Disposition
Nature of Disposition

B. Other Pending Charges

Nature of Charges
Jurisdiction(s)
Current Status of Charges
Willingness of Prosecutor(s)/Court(s) to Drop Charges If Considered by this Court in Disposition of Present Case
Willingness of Prosecutor(s)/Court(s) to Take Jurisdiction in Lieu of Disposition in Present Case
Description of Probation or Parole Status If Under Supervision

C. Plea/Sentence Bargain Data

Date of Negotiation
Persons Present
Original Charge
Reduced Charge
Number of Counts Waived
Inducements Offered
Plea Agreed Upon
Sentence Agreed Upon
Additional Terms of Agreement

D. Restitution Possibilities

Amount of Loss Suffered
Amount Legally Collectible from Defendant
Victims to Whom Restitution Is Due (Names, Addresses, Amounts)
Defendant's Capacity to Pay (Amount Per Week/Month)

C–2 Offense

A. Official Version

Brief Summary of Formal Charges, Including Number of Counts and Nature, Date(s) and Place(s) of Offense(s)
Extent of Property or Monetary Loss
Extent of Defendant's Profit from Offense
Extent of Harm or Injury to Victim or Others
Aggravating Circumstances
Extenuating Circumstances
Circumstances Leading to Arrest
Extent to Which Offense Follows Pattern of Previous Offenses
Relation of Defendant and/or Offense to Organized Crime
Amount of Loss Recovered
Amount of Restitution Made
Related Offenses Not Included in Formal Charges
Premeditated or Impulsive Involvement
Relationship of Defendant to Victim
Synopsis of Trial Transcript
Influence of Alcohol, Narcotics, Medicine, Stress, etc.

B. Defendant's Version

Defendant's Version of Offense and Arrest
Discrepancies Between Official and Defendant's Versions
Defendant's Attitude toward Offense
Defendant's Explanation Why He Became Involved
Impulsive or Premeditated Involvement
Contributing Environmental and Situational Factors
Defendant's Attitude toward
- Arresting Officers
- Investigation Officers
- Custodial Officers
- Probation Officer
- Court
- Prior Convictions and Commitments

Defendant's Understanding of Charges and Possible Penalties
Defendant's Acceptance of Guilt
Extent of Defendant's Cooperation with
- Arresting Officers
- Investigating Officers
- Custodial Officers
- Probation Officer

C. Statements of Interested Parties

Codefendants
- Extent of Their Participation
- Present Status of Their Case(s)

Witnesses
Victims
Complainants
Arresting Officers

D. Weapons/Violence

Description of Weapon Carried at Time of Offense
Description of How Weapon Was Used
Description of Force or Violence, Threatened or Real, in Offense

C-3 Prior Record

A. Juvenile Court History

Dates, Places, Nature of Arrests and Court Dispositions
Summary of Probation/Camp Experiences
Summary of Institutional Experiences
Escapes
Evaluation of Juvenile Court History

B. Adult Misdemeanor

Arrests and Convictions: Dates, Places, Offenses and Dispositions—All Misdemeanors before and after Arrest for Current Offense
Summary of Probation Experiences
Summary of Jail Experiences
Escapes
Evaluation of Misdemeanor Record

C. Adult Felony

Arrests and Convictions (List as for Misdemeanors)
Summary of Probation Experiences
Summary of Institutional Experiences
Summary of Parole Experiences
Escapes
Evaluation of Felony Record

D. Military

Arrests, Summary, Special and General Courts Martials (Dates, Places, Offenses and Dispositions)
Summary of Institutional and Parole Experiences

E. Defendant's Explanation of Prior Criminality and Delinquency

F. Codefendant(s) and Crime Partner(s) in Prior Offenses

C-4 Personal History

A. Social History Prior to Marriage or to Point Where Defendant Permanently Left Parental or Foster Home

Date and Place of Birth
Race
Early Developmental Influences
Attitudes of Parents toward Defendant in Formative Years
Defendant's Feelings about Early Home Life
Home Intact or Broken
Age Left Home; Reasons
History of Runaways from Home
Other Members of Immediate Family in Home
Persons in Home Other than Immediate Family
Relationship with Family Members/Others in Home
Extent of Family Solidarity/Cohesiveness, or Lack Thereof
Criminal Behavior in Family
Naturalization Data (If Naturalized)

Parents' Names, Ages, Addresses, Citizenship, Naturalization Status, Education, Marital Status, Health, Religion, Economic Status, General Reputation; If Deceased, Age at Death and Cause
Brothers and Sisters (Same Data as for Parents)
History of Diseases and Emotional Disorders in Family
Attitude of Family Members toward Offense
Observable Stabilizing or Unstabilizing Family Influences
Description of "Single Status" Period after Leaving Home and before Marriage . . . Pattern of Living

B. Marital and Post Marital History

Present Marriage, Including Common-Law and Other Cohabital Relationships
- Date and Place of Marriage and Name and Age of Spouse at Time of Marriage
- Attitude of Defendant toward Spouse and Children and Theirs toward Defendant, Particularly as Relates to Offense
- Significant Elements in Spouse's Background
- Description of Marital Problems, If Any

Previous Marriage(s)
- Same Data as for Present Marriage, Plus Outcome and Reasons for Divorce(s), If Divorced

Divorce Data
- Grounds, Court, Date of Final Decree, Special Conditions, and to Whom Granted Custody of Children

Children of Defendant's Marriage(s)
- Names, Sex, Age, School, Custody, Support

Degree to Which Defendant Has Assumed Marital and Parental Responsibilities

C-5 Present Physical Environment (Home and Neighborhood)

Description of Home/Lodgings
- Owned or Rented, Type, Size and Adequacy
- General Living Conditions

Residential History
- Date Moved to Present Residence
- Residential Stability in Past Years

Helpful/Harmful Characteristics, Influences, Facilities of Neighborhood
Predominant Ethnicity, Race, Nationality, Culture of Neighborhood

C-6 Present Interpersonal Environment

Defendant Living with
- Parents
- Spouse/Unmarried Partner
- Relatives
- Friends: Male/Female/Both
- Alone

Relationship to Head of Household
Attitude of Defendant and Family/Living Associates toward Home and Neighborhood
Attitude of Neighborhood toward Defendant
Degree of Involvement in or Alienation from Neighborhood Affairs/Activities

C-7 Education and Training

A. Academic Education

Highest Grade Achieved/Degrees Attained
Age Left School/Reasons
Results of Diagnostic Materials
- IQ Tests
- Aptitude Tests
- Achievement Tests
- School Diagnostic Reports

Last School Attended (Dates, Name, Address)
Previous Schools Attended (Dates, Name, Address)
Literacy in English
School Adjustment (Conduct, Scholastic Standing, Truancy, Leadership, Reliability, Courtesy, Likes/Dislikes, Special Abilities/Disabilities, Grades Repeated, Relationships with Pupils/Teachers)
Needs, Attitude and Motivation for Further Education

B. Vocational/Professional Education

Area of Vocational Training
Degree of Proficiency
Additional Training Needed
Vocational School(s) Attended
Dates
Job Readiness: Qualifications to Enter Job Market and Marketable Skills
Area of Professional Training
School(s) Attended
Degree(s) Attained
Dates

Necessary Licenses
Disqualified by Current Offense

C–8 Religious Involvement

Identification of Church or Religious Organization Membership
Extent of Religious Involvement
Degree of Religious Training
Present Feelings about Religion
Pastor's Impression of Defendant
Extent to Which Defendant Is Influenced by Religious Faith or Philosophy

C–9 Interests and Leisure Time Activities

Defendant's Talents and Accomplishments
Primary Leisure Time Interests and Degree of Involvement
Defendant's Associates and Their Reputations

C–10 Physical Health

Identifying Information Such as Height, Weight, Complexion, Color of Eyes and Hair, Scars, etc.
Defendant's General physical Condition/Health Problems Based on His Own Estimate of Health, Medical Reports and Probation Officer's Observations
History of Serious Diseases, Including Their Nature, Dates and Effects
History of Major Surgery and Serious Injuries, Including Their Nature, Dates and Effects
Most Recent Medical Examination: Date, Place, Examiner and Pertinent Findings
Current Medical Treatment, Including Prescribed Medicines and Dosage
Implications of Defendant's Physical Health for Home, Community Involvement, Employment, etc.
Physical Health Problems Relevant to Determination of Sentence
Substance Use or Abuse
- History of Use/Abuse of Alcohol
- History of Use/Abuse of Controlled Substances
- Indications or Admission of Addiction
- Under Influence at Time of Offense
- Defendant's Perception of His Abuse Problem and Willingness to Undergo Treatment
- Record of Treatment/Hospitalization
- Impact of Use/Abuse on Family, Employment and Social Situations

C–11 Mental Health and History

General Social Adjustment
Personality Characteristics as Described by Family Members and as Observed by Probation Officer
Attitude of Defendant about Himself and How He Thinks Others Feel about Him
Probation Officer's Assessment of Defendant's Intelligence
Findings of Psychological and Psychiatric Examinations: Tests, Dates and Examiners
History of Psychiatric Treatment
Emotional Instability as Evidenced by Fears, Hostilities, Obsessions, Compulsions, Depressions, Peculiar Ideas, Dislikes, Sex Deviation
Extent of Defendant's Awareness of Emotional Problems and Manner in Which Defendant Has Dealt with Them
Implications of Mental/Emotional Health for Home, Community, Employment, etc.
Requirements for Immediate Psychological/Psychiatric Treatment
Mental/Emotional Health Problems Relevant to Determination of Sentence

C–12 Employment and Employment History

Employment History for Recent Years, Including Dates, Nature of Employment, Earnings and Reasons for Leaving
Employer's Evaluation of Defendant (Immediate Supervisor Where Possible), Including Attendance, Reliability, Honesty, Reputation, Attitude toward Work, Co-workers and Supervisors, Ability and Willingness to Take Orders and Follow Directions
Occupational Skills, Interests and Ambitions
Means of Subsistence during Unemployment, Including Unemployment Compensation, Welfare, Union Assistance
Unemployability (Explain)

C–13 Military Service

Branch of Service, Serial Number and Inclusive Dates of Each Period of Military Service
Highest Grade/Rank Achieved and Grade/Rank at Separation

Type and Date of Discharge
Attitude toward Military Experience
Impact of Military Service and Defendant's Outlook, Philosophy, Life-style
Foreign Service, Combat Experience and Decorations/Citations
Disciplinary Action(s) Not Covered in *Prior Record-Military*
Reserve and National Guard Service
Veterans Claim Number

C-14 Financial Status: Assets and Liabilities

A. Assets

Statement of Financial Assets Including Real Property and Insurance
Checking Account (Bank, Amount)
Savings Account(s) (Bank, Amount)
Securities (Stocks, Bonds, Type, Value, Income)
Description of Property (Automobile, Boat, Furniture, etc.)
Other Income to Defendant and Family and Source
Amount(s) and Source(s) of Public Economic Support
Credit Rating

B. Obligations

Long Term, Such as Home Mortgage, Automobile Payments, etc.
Current, Short Term Such as the Balance Due and Monthly Payments for Rent, Utilities, Medical Insurance, Home Repairs, Charge Accounts, Outstanding Fines and Restitution
Number and Identity or Persons Fiscally Dependent on Defendant

C. Probation Officer's Observations about:

Defendant's General Standard of Living
Defendant's Money Management
Defendant's Spending Patterns

D. Statement of Net Worth

C-15 Resources Available

(Information to Assist Court in Assessing Various Sentencing Alternatives)

Basic Maintenance
Employment
Vocational Guidance and Training
Medical Treatment
Academic Training
Remedial Education
Legal Assistance
Mental Health Services
Financial Counseling
Residential Treatment Facilities
Institutional Rehabilitation Programs

C-16 Summary

Highlight the most significant data from prior sections as background for *Evaluation and Prognosis* section.

C-17 Evaluation and Prognosis

A. Evaluation

Analysis of Factors Contributing to Present Offense and Prior Convictions (Motivations and Circumstances)
Defendant's Attitude toward Offense
Evaluation of Defendant's Pesonality, Problems and Needs, and Potential for Growth Including Strengths, Weaknesses, Readiness for Change and Established Behavior Patterns
Defendant's Reputation in the Community
Probation Officer's Observations Regarding Defendant Including an Assessment of His Explanations for Criminal Activity
Discussion of Impact of Different Sentencing Alternatives

B. Prognosis

Statistical Probabilities of Success or Failure for the Type of Offense and Offender by Different Sentences
Base Expectancy or Other Prediction Scores
Professional Judgment of Probation Officer as to Outcome of Different Sentences

C-18 Treatment Plan and Recommendation

A. Treatment Plan

Detailed Plan for Achieving Desired Change in Defendant's Behavior Including: Role(s) of Parents, Spouse, Teachers, Employer, Pastor, etc. to Assist in Desired Change; Plans for Residence, Education, Employment, Medical/Psychiatric Treatment and Use of Community Resources

3. Recommendation

The recommendations as to sentencing and/or conditions of probation must be in accord with court policy and general probation organization guidelines. These recommendations must be consistent with the factual information about the offense and offender and their evaluations

APPENDIX D
ANNOTATED BIBLIOGRAPHY

Barnett, Jacob B. and Gronewold, David H., "Confidentiality of the Presentence Report." *Federal Probation* XXVI (March 1962): 26–30.

This article concentrates on the use and confidential nature of the presentence report. The co-authors endorse the claim that professional attitudes and agency policies toward the protection of confidential records must be given equal attention by others outside the agencies' perimeters. "The court and the probation officer, as source and distributor of the presentence, has the joint responsibility for working toward the protection of the report wherever it may be sent."

Bartoo, C. H., "Some Hidden Factors Behind Probation Officer's Recommendations." *Crime and Delinquency* 9 (July 1963): 276–281.

In this article emphasis was placed on a reported informal "bull session" held by probation officers. The purpose of the session was to look into some of the less obvious factors which may consciously or unconsciously influence a probation officer's recommendation. The crux of the discussion centered in some searching questions which called for and elicited frank responses.

Bates, Jerome E., "Presentence Investigation in Abortion Cases." *Crime and Delinquency* (July 1963): 306–312.

This article points out nine different questions a probation officer should consider in understanding those aspects of the background and criminal record (if any) of a particular type of offender—the abortionist. The author believes that special attention given these questions will help facilitate the presentence investigations on abortion cases.

Carter, R. M., "It is Respectfully Recommended . . .," *Federal Probation* (June 1966): 38–42.

This article examines the complexity and characteristic nature of the final evaluation and recommendation made by probation officers within the Presentence Report. Utilizing selected statistics from the "San Francisco Project," the author analyzes the professionalism necessary to complete a comprehensive evaluation and recommendation crucial to the presentence report content and the judicial decision-making process.

Carter, Robert M., "Presentence Information and Decision-Making." *Trial Judges Journal* (1969): 11–13.

As its title indicates, the article focuses on the need for a thorough and on-going analysis of presentence (probation) reports in the judicial and correctional process ranging from the data collection effort through decision-making. The author emphasizes that this evaluation must include a reexamination and possible reformulation of goals, not from a tradition-oriented perspective, but rather in terms of the conditions emergent in the criminal justice process It is suggested that the presentence report should contain only relevant data enabling the probation officer to concentrate on more extensive investigations.

Carter, Robert M. and Wilkins, Leslie T., "Some Factors in Sentencing Policy." *Journal of Criminal Law, Criminology and Police Science* 58 No. 4 (1967): 503–514.

In this paper, some explicit questions about presentence report recommendations and their relation to court dispositions are discussed. Many conclusions are drawn with the central point being that "the relationship between recommendations for and dispositions of probation are high and that the relationship diminishes when viewed from the reommendations against and the subsequent grant of probation perspective." The authors conclude that even with the information provided, vast gaps exist in understanding our correctional services. An understanding can be achieved only when there is a willingness to scrutinize current traditional models.

Carter, Robert M., "The Presentence Report and the Decision-Making Process." *Journal of Research in Crime and Delinquency* (1967): 128–137.

Utilizing the results of a "decision-game" research study introduced by L. T. Wilkins, the author examines in some detail the process toward decision-making in the preparation of the presentence report by Federal Probation Officers. This article succeeds in probing an area of the correctional process which is commonly overlooked but important in its implications for the specific course of action toward a given offender.

"Employment of Social Investigation Reports in Criminal and Juvenile Proceedings." 58 *Columbia Law Review* 702 (1958).

An in-depth examination of the presentence report and its impact on both the criminal and juvenile proceedings is presented by this article. The major emphasis is placed on both legislative enactments and court rulings governing the social investigation and report. This article contains many cross references to statutes and court cases of legal precedence which have created an impact on the uses and content of the presentence investigation and report.

Evjen, V. H., "Some Guidelines in Preparing Presentence Reports." 37 *F.R.D.* 117 (1965): 177–181.

This paper concentrates on developing unformity in presentence reports by emphasizing a standard outline and format. This standard outline and format was achieved through observation of the various practices in probation offices thoughout the country.

Fitzgerald, E., "The Presentence Investigation." 2 *National Probation and Parole Association Journal* 320 (1956).

Although somewhat dated in content, this article outlines the basic elements of the presentence investigation as well as the format guidelines to the presentence report. Much of the presentence material presented by this article consists of reflections of the usage and practices within the County Courts of the State of New York.

Goodman, Judge Louis E., "Utilization of Presentence Resources." 26 *F.R.D.* 323 (1961). (Pilot Sentencing Institute).

Lecturing to the Pilot Institute on Sentencing, Judge Goodman espouses the value of the presentence investigation and report of Federal Probation Officers to the sentencing process. The author, speaking for the judicial environment, highlights the resources available to the sentencing judge, (1) F.B.I., (2) hospitals, (3) other government agencies, and empha-

sizes the importance of a comprehensively accurate presentence investigation and report.

Gronewold, D.H., "Presentence Investigation Practices in the Federal Probation System." *Federal Probation* XXII (September 1958): 27–32.

This 1958 article centers around a study which was made to determine the present reporting practices of Federal Probation Officers. One of the study's conclusions evidenced the fact that substantial progress has been made toward the standardization of investigative practices by a majority of Federal Probation Offices.

Guzman, R., "Defendants Access to Presentence Reports in Federal Criminal Courts." 52 *Iowa Law Review* 161 (1966).

"Recent decisions by the United States Supreme Court have prompted a reappraisal of many procedural practices employed in criminal prosecutions. One such practice currently in use is the denial of a defendant's access to presentencing reports. In the Federal Courts access to such reports have been subject to the discretion of the trial judge. Mr. Guzman analyzes this grant of discretionary power in light of the Supreme Court's decisions. Weighing the arguments for and against unlimited access, the author balances the scales with a statutory proposal aimed at securing the interests of all the parties involved in federal criminal litigation."[1]

Higgins, J. P., "Confidentiality of Presentence Reports," 28 *Albany Law Review* 12 (1964).

Unlike many articles which simply discuss the philosophical dilemma surrounding the issue of confidentiality and the presentence report, this article explores the controversy based on responses to a summary survey presented to Federal judges. The adequacies and inadequacies of section 32(c)(2) of the *Federal Rules of Criminal Procedure* are discussed with emphasis on the defense counsel's role in protecting client interests. Higgins favors the disclosure of the presentence report after the determination of guilt has been established, eliminating the chances of error.

Hoffman, L. Wallace, "Analysis of a Presentence Report." *Federal Probation* Vol XIV, Number IV.

In this presentation on presentence reports the author analyzes what he considers are the pitfalls into which a probation officer experiences when he fails to make an adequate analysis of the problem of the defendant before writing his report. Using an example of a presentence report, the author states that these pitfalls result from too much emphasis being placed upon the action of the defendant. Instead, attention should be directed toward the thinking of the defendant and the factors that determined his action.

Imlay, Carl H. and Reid, Elsie L., "The Probation Officer, Sentencing, and the Winds of Change." *Federal Probation* XXXIX (December 1975): No. 4, 9–17.

A comprehensive look at the use of the probation officer in the sentencing process is discussed in this article. Central to the article is how a probation officer should function on the question of whether the primary goal in sentencing is rehabilitative and individualistic, or exemplary and uniform. The authors state that this can only be solved when the probation officer functions as a social scientist promoting the former, even when attitudes

[1]Page 161, 52 *Iowa Law Review,* 1966.

exist for punitive remedies. A probation officer, therefore, must "promote elasticity in the face of a rigid judicial approach to sentencing."

Kaufman, I. R., "Sentencing: The Judge's Problem." *The Atlantic Monthly* 205, 1 (1960): 40–46.

Irving Kaufman calls attention to the fact that sentencing procedures need to be reexamined because many judges reach disparate results in cases with striking similarity. He believes that only through greater cooperation between judges, law-enforcement officials, and other disciplines can the disparity problem be solved.

Keve, Paul W., "The Identifying Data. The Probation Officer Investigates." *A Guide to the Presentence Report.* Minneapolis: University of Minnesota Press (1960): 57–63.

This chapter focuses on how to present identifying data at the beginning of presentence reports. A sample format is advocated which is simple, uncluttered and sparsely designed with items that would be of concern to a judge. These items are considered universal in character and appropriate in every court.

Keve, Paul W., "The Message in Mr. Piyo's Dream." 25 *Federal Probation* 4 (1961).

Mr. Keve, through his character, Mr. Piyo, insightfully discusses the elements necessary to render a quality presentence report, worthy of the hundred dollars it cost to produce.

Keve, Paul W., "The Professional Character of the Presentence Report." *Federal Probation* XXVI (June 1962) 51–56.

Paul Keve emphasizes throughout this article the responsibility of the probation officer to skillfully develop and perfect the presentence report. The author stresses the need for report writing styles and techniques which employ "sensitivity to the feelings behind the facts," and enrich the communicative nature of the report, eliminating the sterile writing method which is presently practiced.

Larkins, Norm, "Presentence Investigation Report, Disclosure in Alberta." 36 *Federal Probation* 4 (1972).

In 1968–69 certain sections of the Criminal Code of Canada specifically dealing with probation were amended. This article examines the issue of confidentiality in light of the amended codes which presently require disclosure, not only to the courts, but to both crown counsel and defense.

Lorensen, William, "The Disclosure to Defense of Presentence Report in West Virginia." 69 *West Virginia Law Review* 159 (1967).

This article centers around the general disparity of views surrounding the problem of disclosure and the presentence report in West Virginia. Professor Lorensen examines the ambivalent position taken regarding the presentence report and historical events which led up to the present stand on confidentiality in West Virginia.

Meeker, Ben, "Analysis of a Presentence Report." *Federal Probation* Vol. XIV, Number 1, 41–46.

This presentation is the first of two series of articles published by *Federal Probation* that deal with the basic concepts in chronological recordings and in the development of presentence investigation reports. In this analysis,

attention is directed toward a presentence report example that emphasizes to probation officers the need to separate external and internal influences which appear significant in compiling presentence reports. (Dated but informative.)

"Need to Provide Better Information for Sentencing." From Ch. 5 of *State and County Probation: System in Crisis.* Comptroller General of the United States, Law Enforcement Assistance Administration (GGD-76-87) (May 27, 1976): 18-24.

This chapter is an examination and evaluation of 593 presentence reports out of 1,100 cases conducted within the State of Pennsylvania. Numerous statistics are presented highlighting a four county investigation as to the application of the presentence report; emphasis was placed on the utilization or the failure of utilization of diagnostic tests before sentencing. Certain conclusions are drawn, one such being that approximately 46% of the total 1,100 cases showed that no presentence reports were prepared.

Newman, Charles L., "Investigation and Selection in Probation." *Source Book on Probation, Parole and Pardons.* Springfield, Ill.: Charles C. Thomas Publisher, (1964): 106-112.

Following a brief introduction and the commonly accepted contention that uniformity is lacking as to the "quality and type of investigation" preceding the assignment of probation, the author presents an outline and guide to preparing and reporting. The primary documented source for the outline and guide was reprinted from the New York State Division of Probation, "Manual for Probation Officers." (1945)

Orland, Leonard, "Bureaucratic Prechoice: Presentence Investigation and Report." *Justice, Punishment and Treatment.* McMillan: The Free Press (1973) 20-32.

Chapter three of Mr. Orland's book is primarily a collection of relevant materials on the presentence investigation and report. Verbatim decisions of *Williams* v. *New York* 337 U.S. 241 (1949) and the task force reports on Presentence Standards by the President's Commission on Law Enforcement and Administration of Justice are cited.

Parsons, J. B., "Aids in Sentencing." 35 *F.R.D.* 423 (1964) (Sentencing Institute, Denver.)

Utilizing two sample presentence reports, Judge Parsons comments on how to improve them. The author also lends insightful remarks pertaining to the judicial mind and its response to the report's quality and usefulness.

Parsons, James B., "The Presentence Investigation Report must be Preserved as a Confidential Document." 28 *Federal Probation* 1, (1964).

Federal Judge James Parsons of the U.S. District Court, Northern District of Illinois, endorses the claim that the presentence report must be preserved as a confidential document. Emphasis is placed on the present adequacy of Rule 32, Federal Rules of Criminal Procedure, and that any rule change may result in damage to the defendant.

Roche, A. W., "The Position for Confidentiality of the Presentence Investigation Report." 29 *Albany Law review* 206 (1965).

In the continuing debate over confidentiality surrounding the presentence report and specifically Rule 32(c)(2) of the Federal Rules of Criminal Procedure, Mr. Roche takes the position that the presentence report should

not be developed, in any form, complete or partial, as a matter of right or request to the defendant. This article propounds the various arguments which arise over disclosure as well as the author's own viewpoint concerning the confidentiality issue.

Rubin, S., "What Privacy for Presentence Reports." 16 *Federal Probation* 8 (1952).

The author, through this article, argues the position for disclosure of the presentence report. Persuasively, Mr. Rubin establishes his conclusion on legal and social grounds, weighing both the benefits of disclosure with that of the risks.

Schaffer, B., "The Defendant's right of Access to Presentence Reports." 3 *Criminal Law Bulletin* 674 (1967).

The focal point of this article centers around the question of whether or not a defendant should be allowed access to his presentence report. Several arguments and practices are discussed for and against granting such access. Benson Schaffer believes that "perhaps the most realistic 'balancing of the equities' would call for mandatory disclosure to defense counsel (or to defendant appearing in pro per)." This would cause the probation officer to exclude unnecessary statements and should help sharpen his investigatory skills.

Sharp, Louis J., "Presentence Resources." 30 *R.F.D.* 483, (1962) (Sentencing Institute, 5th Circuit).

This brief but concise article places in perspective the role of the Federal probation officer and the utilization of the presentence report; certain recommendations are made by Mr. Sharp relevant to several areas of presentence work which are commonly overlooked.

Sharp, L. J., "The Confidential Nature of Presentence Reports." 5 *Catholic University of America Law Review* 127 (1955).

With a strong foundation on case law and State and Federal criminal codes, this article examines the factors which seem of major importance when discussing the confidential nature of the presentence report. Although better defined trends concerning disclosure of the presentence report have evolved since the publishing of this article, much of the material presented continues to be both timely and relevant.

Sharp, Louis L., "The Presentence Report." 30 *R.F.D.* 242 (1962) (Sentencing Institute, 5th Circuit).

This lecture presented to the Sentencing Institute of the 5th Circuit addresses in a general way the basic elements deemed necessary by the author for any presentence report. Emphasis is placed on the purposes of the presentence investigation and the need for the report to reflect the attitudes and feelings of the defendant as well as a verification for all other essential information.

Simpson, Bryan, United States District Judge, Southern District of Florida, "Utilization of the Presentence Report and Other Presentence Resources." 30 *R.F.D.* 247 (1962) (Sentencing Institute, 5th Circuit).

Although this article was written some years ago and may contain some dated information, Judge Simpson's comments pertaining to supplemental data to the presentence report and his personal reflection on the presentence information is both informative and enlightening.

Stump, Lawrence M., "Court Investigations and Reports." *Federal Probation* No. 2, Vol. XXI (1957): 9–17.

A complete consideration of the utilization of court investigations and reports by probation officers is outlined in this article. Lawrence M. Stump, supervising parole officer of the California Youth Authority, provides specific suggestions about how to conduct these investigations and reports. He believes that investigations will be effective if probation officers successfully: (1) plan their work; (2) use selection in pursuing information and in preparing their reports; (3) interview skillfully; and (4) produce a report which is readable and speaks directly.

The Presentence Investigation Report, Publication No. 103, Division of Probation, Administrative Office of the United States Courts, Supreme Court Building, Washington, D.C. (1965).

This publication is the Federal probation's guideline to the presentence investigation and report. This publication covers the content and format of the report with general suggestions concerning the style, objectivity and accuracy involved in the writing of the report.

Thomsen, R. C., "Confidentiality of the Presentence Report: A Middle Position." 28 *Federal Probation* 8, (1964).

Unlike the majority of Federal District Courts in America, the Maryland District makes available the presentence report to defense counsel. Chief Judge Thomsen, through his article, sketches the "middle position" utilized by the District Court in Maryland, proporting confidentiality of the presentence report, without sacrificing the safeguards established for the rights of the defendant.

"Use of the Presentence Investigation in Missouri." *Washington University Law Quarterly* 396 (1964).

In light of the Supreme Court Decision in *Williams* v. *New York* on the issue of disclosure and the presentence report, this article cites the fact that in Missouri, 78% of the judges disclose the report in some cases and 39% disclose the report in all cases. The procedures and uses of the presentence investigation and report, in Missouri, are aptly handled by this article and contain interesting data which reflect the judicial use of the presentence information.

Wahl, Albert and Glaser, Daniel, "Pilot Time Study of the Federal Probation Officer's Job." 27 *Federal Probation* 21 (1963).

This article was based on a pilot study of 31 probation offices in no less than 15 judicial districts. The purpose of the study was to establish a basis for the amount of time required to complete the major tasks of a probation officer. Initiated by the Federal Probation Officers Association, this study revealed substantial information concerning the probation officers' time allocations to job related functions. Interestingly, one of the results showed that Federal probation officers spend 33.7% of their monthly hours (168.0) on presentence work alone.

Wallace, Hohn A., "A Fresh Look at Old Probation Standards." *Crime and Delinquency* Vol. 10, No. 2 (April 1964).

The central point of this article is to question some probation standards and evaluate how effective they actually are when applied. This was done by examining some of the assumptions on which these standards and prac-

tices are based. As a result, alternative ways of looking at the selection of disposition, the presentence investigation, the concept of probation, caseload standards, and the educational qualifications of probation personnel are suggested.

Wilson, J., "A New Arena is Emerging to Test the Confidentiality of Presentence Reports." 25 *Federal Probation* 6 (1961).

Concern over the issue of confidentiality surrounding the presentence report is dealt with by Mr. Wilson, a member of the District of Columbia bar and former U.S. Attorney. It is his contention that the Appellate Courts are not entitled to the presentence report from the trial level. He questions whether they should seek to obtain them from any lower jurisdiction. He also maintains that it is unlikely the Appellate Courts could sustain confidentiality of the report, even if they proposed to do so.

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PRESCRIPTIVE PACKAGE: "Presentence Report Handbook"

To help LEAA better evaluate the usefulness of Prescriptive Packages, the reader is requested to answer and return the following questions.

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