

The Presentence Investigation Report

Selection of an appropriate sentence is one of the most important decisions to be made in the criminal justice system. The primary vehicle to assist the sentencing court in fulfilling this responsibility is the presentence investigation report. The task of conducting presentence investigations is assigned to U.S. probation officers, an assignment requiring a professional presentence report of the highest quality.

As a component of the federal judiciary responsible for community corrections, the Federal Probation and Pretrial Services System is fundamentally committed to providing protection to the public and assisting in the fair administration of justice. As community corrections professionals, probation officers preparing presentence reports possess and use skills from various disciplines to investigate relevant facts about defendants; assess those facts in light of the purposes of sentencing; apply the appropriate guidelines, statutes, and rules to the available facts; and provide clear, concise, and objective reports that will assist the sentencing judges in determining appropriate sentences, aid the Bureau of Prisons in making classification, designation and programming decisions, and assist the probation officer during supervision of the offender in the community.

The probation officer's role as the court's independent investigator is critical, although the scope of any investigation may be modified by the court. Officers should be open to receiving information from all parties but should be cautious about adopting any party's interpretation outright. It is the probation officer's responsibility to prepare all sections of the presentence report, including the tentative advisory guideline range. Attorneys for opposing sides may aggressively contest the accuracy of facts contained in the presentence report or application of the guidelines to those facts.

The presentence report will follow the defendant through his or her contacts in the federal criminal justice system. Many decisions -- from the sentence imposed, to the type of prison -- are made based on information presented in the report. The report is designed to provide the court with a complete and concise picture of the defendant.

In November 1987, the Sentencing Reform Act of 1984 became effective, radically changing the philosophical model for sentencing offenders in the Federal courts. Congress relinquished an indeterminate model of sentencing and adopted a determinate model based upon national guidelines. Radical changes in the content and format of the presentence report were necessary to accommodate the new sentencing process. In January 2005, the Supreme Court ruled in *United States v. Booker*, 125 S.Ct. 738 (2005), that the mandatory nature of the sentencing guidelines subjected them to the jury trial requirements of the Sixth Amendment of the Constitution. The Court further held that since it was not Congress's intent to have sentencing facts decided by juries, the appropriate remedy was

to strike those provisions of the Sentencing Reform Act of 1984 that made the sentencing guidelines mandatory. The result was a system in which the sentencing courts are required to consider the sentencing options recommended by the sentencing guidelines, but judges are free to impose any sentence authorized by Congress.

Statutory Authority and Requirements

Rule 32 of the Federal Rules of Criminal Procedure provides that the probation officer shall conduct a presentence investigation and submit a report to the court at least seven days before the imposition of sentence, unless the court finds that there is sufficient information in the record to enable the meaningful exercise of sentencing authority. The probation officer must conduct an investigation and submit a report if the law requires restitution. There will be no presentence report prepared for defendants sentenced under 18 U.S.C. § 3593(c) or 21 U.S.C. § 848(j).

Following the defendant's entry of a guilty plea, or upon a guilty verdict following a trial, the court may order the probation officer to conduct a presentence investigation and submit a presentence investigation report.

A presentence investigation may be initiated prior to entry of a guilty plea or nolo contendere, or prior to the establishment of guilt, but the report may not be disclosed to the court, the defendant, the attorney for the defendant, and the attorney for the government, unless the defendant consents in writing to disclosure of the report to the court prior to conviction pursuant to Rule 32.

Before or after receipt of a presentence report, the court may order a study and report of the defendant if the court desires more information than is otherwise available to it as a basis for determining the sentence pursuant to 18 U.S.C. § 3552(b). This statute provides that the study and report are to be conducted in the community by qualified consultants, unless the court finds there is a compelling reason for the study to be conducted by the Bureau of Prisons or there are no adequate professional resources available in the local community to perform the study. If the court is specifically interested in additional information regarding the mental condition of the defendant, the court may order a psychiatric or psychological examination and report under the provisions of 18 U.S.C. § 3552(c). The court may order the examination before or after receipt of the presentence report.

Pursuant to Rule 32(d)(1) of the Federal Rules of Criminal Procedure, the presentence report must:

- (A)** identify all applicable guidelines and policy statements of the Sentencing Commission;
- (B)** calculate the defendant's offense level and criminal history category;
- (C)** state the resulting sentencing range and kinds of sentences available;
- (D)** identify any factor relevant to:
 - (i)** the appropriate kind of sentence; or
 - (ii)** the appropriate sentence within the applicable sentencing range; and
- (E)** identify any basis for departing from the applicable sentencing range.

Pursuant to Rule 32(d)(2) of the Federal Rules of Criminal Procedure, the presentence report must also contain:

- (A)** the defendant's history and characteristics, including:
 - (i)** any prior criminal record;
 - (ii)** the defendant's financial condition; and
 - (iii)** any circumstances affecting the defendant's behavior that may be helpful in imposing sentence or in correctional treatment;
- (B)** information that assesses any financial, social, psychological, and medical impact on any victim;
- (C)** when appropriate, the nature and extent of non-prison programs and resources available to the defendant;
- (D)** when the law provides for restitution, information sufficient for a restitution order;
- (E)** if the court orders a study under 18 U.S.C. § 3552(b), any resulting report and recommendation;
- (F)** a statement of whether the government seeks forfeiture under Rule 32.2 and any other law; and
- (G)** any other information that the court requires, including information relevant to the factors under 18 U.S.C. § 3553(a).