

THE ALTERNATE DEFENSE PRE-SENTENCE INVESTIGATION REPORT: TEMPERING HARSH STATE SENTENCING RECOMMENDATIONS

By: Attorney Jeffrey L. Murrell*

In the Wisconsin circuit-court system, judges in felony cases may order that a pre-sentence investigation (PSI) report be generated by a probation/parole agent from the Department of Corrections (DOC) so that the court has the fullest understanding possible of the defendant's life and circumstances at sentencing. Wis. Stat. § 972.15(1). See also Lloyd E. Olles & Frank J. Remington, *Discerning in Criminal Justice: The Tension Between Individualization and Efficiency* 148 (1993).

This, of course, is so that the court will be able to make the most fully-informed and fairest dispositional decision possible. At times, PSI reports prepared by state corrections agents recommended prison sentences which are harsher than what the prosecutors recommended. One way of anchoring an unfair prison-sentence recommendation in a court-ordered PSI report is for the defense to present its own alternate PSI report for the judge's information and consideration at sentencing. This article describes the main purposes of a PSI report, the typical structure of PSI reports, potentially prejudicial aspects of state-generated PSI reports, and how defense counsel may try to counter an unduly harsh state PSI recommendation by submitting a defense alternate PSI report.

The Anatomy of a Pre-Sentence Investigation Report

In Wisconsin's state courts, a PSI report normally consists of two parts:

First is a state-mandated cover sheet containing the basic personal information about the defendant, such as date of birth, sex, height, and weight and information about the county circuit court involved and the charged offense(s).

Second, the state form is usually stapled on top of a multi-page document of varying styles and length which all present, more or less, separate paragraphs outlining the information sources relied on by the PSI writer, a review of the defendant's general background, the offense(s) as alleged, the defendant's version of the offense(s), victim impact and restitution needs, a review of any pending criminal charges (see *Roscoe v. State*, 74 Wis. 2d 699, 247 N.W.2d 711 (1976) where the court held a judge does not deny due process by considering pending criminal charges in determining a sentence), past arrests and existing conviction record of the defendant, an analysis of the defendant's acceptance or not of responsibility, and any possible prison programs or prison alternatives that might be available for the defendant under the circumstances, such as eligibility for earned release or the Challenge Incarceration Program. Wis. Stat. §§ 972.15(2a)-8 (2c).

Finally, the writer's sentencing recommendation is given.

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Ingrid Thompson-Cooper



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the incestuous abuse how it was disclosed and the initial response from the professionals. It then looks at how the cases are processed through child welfare and criminal justice systems with attention paid to the decisions made throughout. The nature of the social service contacts with the family are also examined as are the type and length of treatment. It attempts to determine what factors influence the legal and clinical decisions that are made by various professionals throughout the whole process.

Selective Incapacitation and the Serious Offender Rudy Haapanen, 2012-12-06. And if thy right hand offend thee cut it off and cast it from thee for it is profitable for thee that one of thy members should perish and not that thy whole body should be cast into hell. Matthew 5:30. The great War on Poverty of the 1960s focused on the root causes of crime: unemployment, lack of education, and discrimination. It was eventually agreed that the War on Poverty failed as a crime control program and the focus of policy shifted toward more proximate causes of crime. In fact, it seems safe to say that since the 1960s the United States has looked primarily to the criminal justice system to solve its crime problem. With the 1990s upon us, what can we say about the success of crime control policies that rely on the criminal justice system? The picture taken one approach or program at a time is not good. It is now generally agreed that the criminal justice system fails to rehabilitate offenders to make them less likely to commit criminal acts as a result of treatment or training; that the system fails to deter potential offenders to make them less likely to commit criminal acts out of fear of penal sanctions; and that such programs as increased police patrols, reinstatement of the death penalty, and modification of the exclusionary rule are unlikely to have much effect on crime at least within the limits imposed on them by reasonable assessments of their costs.

Juvenile Delinquency United States Children's Bureau, 1960. Comparison of Expenditures and Estimated Standard Costs for Selected Juvenile Delinquency Services University of Pennsylvania Government Consulting Service, 1960. *The Children's Bureau and Juvenile Delinquency* Dorothy Edith Bradbury, I. Richard Perlman, 1960. American Probation and Parole Association's Drug Testing Guidelines and Practices for Juvenile Probation and Parole Agencies, 1992. **American Probation and Parole Association's Drug Testing Guidelines and Practices for Adult Probation and Parole Agencies**, 1991.

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