

A Proposal to Ensure Accuracy in Presentence Investigation Reports

Over the last century, the American criminal justice system has been shaped by the penal theory that punishment should fit not only the crime but also the rehabilitative needs of the criminal.¹ Essential to this goal of individualized sentencing and correctional treatment is the availability of a wide range of information about a criminal defendant's background and characteristics.² The Presentence Investigation Report (PSI) is the primary source of such information for all stages of the correctional process. PSIs, however, often contain inaccurate information, which may lead to inappropriate and unfair judgments regarding an offender's sentence, custody conditions, or parole eligibility.³ Although Rule 32(c) of the Federal Rules of Criminal Procedure currently permits defendants to challenge the accuracy of information in their PSIs prior to sentencing,⁴ lower

1. See *Williams v. New York*, 337 U.S. 241, 247 (1949) (citing "prevailing modern philosophy of penology that the punishment should fit the offender and not merely the crime"); M. FRANKEL, *CRIMINAL SENTENCING* 87 (1972) ("[I]ndividualized rehabilitation is the paramount goal in sentencing."); Bergen, *The Sentencing Power in Criminal Cases*, *ALB. L. REV.*, Jan. 1949, at 1, 3 (noting modern attempt to fit treatment to the individual rather than punishment to the crime). In keeping with the rehabilitative model, judges have nearly unlimited discretion, within broad statutory limits, to impose appropriate sentences. See M. FRANKEL, *supra*, at 5-7, 82-85 (describing "wholly unchecked and sweeping powers" of sentencing judges); Cohen, *Sentencing, Probation, and the Rehabilitative Ideal: The View from Montana v. Rhy*, 47 *TEX. L. REV.* 1, 14-15 (1968) (citing common belief that rehabilitative goals "can be best obtained by the preservation of maximum discretion on the part of judicial and correctional authorities").

In recent years the rehabilitative model has come under increasing attack. Critics question the ability of the criminal justice system accurately to classify offenders and predict their future conduct, as promised by the rehabilitative theory. See, e.g., AMERICAN FRIENDS SERVICE COMM., *STRUGGLE FOR JUSTICE* 40-47 (1973) (theory based on "venerable factual assumptions"); M. FRANKEL, *supra*, at 84-94 (criticizing "baseless assumption that we are able effectively to understand and uniquely to 'treat' the individual"). As a result, critics argue, the focus on individualized sentencing has led to gross sentencing disparities. See, e.g., 3 *STANDARDS FOR CRIMINAL JUSTICE* § 18-2.2, at 66 (2d ed. 1986) (rehabilitative model "comes at the cost of tolerating extensive sentencing disparities") [hereinafter cited as *STANDARDS*].

2. See *Williams v. New York*, 337 U.S. 241, 247 (1949) ("Highly relevant—if not essential—to [a judge's] selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics."); *Mégarie v. United States*, 571 F.2d 179, 182 (3d Cir. 1978) (such data facilitates tailoring of sentence "to the circumstances of a particular defendant"); Schwablenbach, *Information as Basis for the Imposition of Sentence*, *J. AM. JUDICATURE SOC'Y*, Aug. 1943, at 52 (author former United States District Court judge) (such information "only proper basis" for determining appropriate treatment); cf. 18 U.S.C. § 3577 (1976) ("No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.")

3. See *infra* note 23 (describing uses of PSI by correctional agencies).

4. Rule 32(c)(3)(A) provides in pertinent part:

Before imposing sentence the court shall upon request permit the defendant, or his counsel if he is so represented, to read the report of the presentence investigation . . . ; and the court shall afford the defendant or his counsel an opportunity to comment thereon and, at the discre-

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Larry S. Miller, John T. Whitehead



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