

## **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)-(2c).

Finally, the writer's sentencing recommendation is given.

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**Mike Jess**



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### Table of Contents Probation Report Samples

1. Understanding the eBook Probation Report Samples
  - The Rise of Digital Reading Probation Report Samples
  - Advantages of eBooks Over Traditional Books
2. Identifying Probation Report Samples
  - Exploring Different Genres
  - Considering Fiction vs. Non-Fiction
  - Determining Your Reading Goals
3. Choosing the Right eBook Platform
  - Popular eBook Platforms
  - Features to Look for in an Probation Report Samples
  - User-Friendly Interface
4. Exploring eBook Recommendations from Probation Report Samples
  - Personalized Recommendations
  - Probation Report Samples User Reviews and Ratings
  - Probation Report Samples and Bestseller Lists
5. Accessing Probation Report Samples Free and Paid eBooks
  - Probation Report Samples Public Domain eBooks
  - Probation Report Samples eBook Subscription Services
  - Probation Report Samples Budget-Friendly Options
6. Navigating Probation Report Samples eBook Formats
  - ePub, PDF, MOBI, and More
  - Probation Report Samples Compatibility with Devices
  - Probation Report Samples Enhanced eBook Features
7. Enhancing Your Reading Experience
  - Adjustable Fonts and Text Sizes of Probation Report Samples
  - Highlighting and Note-Taking Probation Report Samples
  - Interactive Elements Probation Report Samples
8. Staying Engaged with Probation Report Samples

- Joining Online Reading Communities
- Participating in Virtual Book Clubs
- Following Authors and Publishers Probation Report Samples
- 9. Balancing eBooks and Physical Books Probation Report Samples
  - Benefits of a Digital Library
  - Creating a Diverse Reading Collection Probation Report Samples
- 10. Overcoming Reading Challenges
  - Dealing with Digital Eye Strain
  - Minimizing Distractions
  - Managing Screen Time
- 11. Cultivating a Reading Routine Probation Report Samples
  - Setting Reading Goals Probation Report Samples
  - Carving Out Dedicated Reading Time
- 12. Sourcing Reliable Information of Probation Report Samples
  - Fact-Checking eBook Content of Probation Report Samples
  - Distinguishing Credible Sources
- 13. Promoting Lifelong Learning
  - Utilizing eBooks for Skill Development
  - Exploring Educational eBooks
- 14. Embracing eBook Trends
  - Integration of Multimedia Elements
  - Interactive and Gamified eBooks

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