

## **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. Ohlin & 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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