

The History of the Pre-sentence Investigation Report

Considered among the most important documents in the criminal justice field, the presentence investigation report (PSI) has been the central source of information to sentencing judges since the 1920s. Its original purpose was to provide information to the court on the defendant's personal history and criminal conduct in order to promote individualized sentencing. With the advent of more punitive sentencing policies in recent years, the PSI has become more offense focused and less individualized. Despite current trends, the PSI will likely remain a critical component of the American criminal justice system

Origins of the PSI

The origins of the modern presentence investigation began in the 1840s with the crusading efforts of Boston shoemaker John Augustus (1841-1859). It was Augustus' belief that the "object of the law is to reform criminals and to prevent crime, and not to punish maliciously or from a spirit of revenge." In his efforts to redeem selected offenders, Augustus gathered background information about the offender's life and criminal history. If he determined that the person was worthy, Augustus provided bail money out of his own pocket. If he succeeded in winning the person's release, he helped them find employment and housing. Later he appeared at the sentencing hearing and provided the judge with a detailed report of the person's performance. Augustus would then recommend that the judge suspend the sentence and release the person to his custody.

Considered the father of modern probation, Augustus's leadership led the Massachusetts legislature to establish the nation's first probation law in 1878. By authorizing the Mayor of Boston to appoint a member of the police department to serve as a paid probation officer, this statute formalized the practice of extending probation to "such persons as may be reasonably be expected to be reformed without punishment." The law was expanded in 1891 with the creation of an independent state-wide probation system. By the time that the National Probation Act was passed in 1925 creating a Federal probation service, the majority of states had probation statutes.

The evolution of the presentence investigation was given further impetus by the reformatory movement of the 1870s. Because reformatory movement proponents advocated an individualized approach towards the redemption of the criminal, indeterminate sentencing became a popular sentencing reform throughout the later half of

the 19th century and became the standard form of sentencing throughout the United States until the 1980s.

Simultaneous to the development of probation and the indeterminate sentence, the evolution of the social sciences gave rise to the medical model of corrections during the 1920s and 1930s. The medical model was founded on the belief that crime was the result of individual pathology that could be diagnosed and treated like a disease. Judges simply needed to know the problem in order to prescribe treatment.

As these systems and approaches evolved, the need for more information about the defendant became critical. By the 1930s, one of the primary tasks of probation officers throughout the country was the preparation of the presentence investigation report.

Content of the PSI

Offender-based reports

The traditional PSI was intended to provide the judge with comprehensive background information about the offender. Under this model, the PSI was intended to promote individualized sentencing by giving information specific to the offender's potential for rehabilitation and community reintegration and allow judges to tailor their sentence accordingly. The offender-based PSI is integral to a sentencing system founded on rehabilitation.

The elements of an offender-based report includes a summary of the offense, the offender's role, prior criminal justice involvement, and a social history with an emphasis on family history, employment, education, physical and mental health, financial condition and future prospects. Based on this thorough background analysis, a probation officer renders a sentencing recommendation. In a 1978 publication by the Administrative Office of the United States Courts described the essential elements of a typical offender-based PSI:

It specifies what the presentence report shall contain, i.e., "any prior criminal record of the defendant and such information about his characteristics affecting his behavior as may be helpful in imposing sentence... and such other information as may be required by the court

In this type of PSI, little consideration is given to the offense or victim concerns. Instead, the primary role of the probation officer is to investigate the offender's background.

Although standards differ from jurisdiction to jurisdiction, figure one is an outline of the Federal probation systems format for an offender-based PSI.

Elements of an Offender-Based Presentence Report

1. Offense

- Official Version
- Defendant's Version
- Codefendant Information
- Statement of witnesses, complainants, and victims

2. Prior Record

- Juvenile adjudications
- Adult arrests
- Adult convictions

3. Personal and Family Data

- Defendant
- Parents and siblings
- Marital
- Education
- Employment
- Health
 - Physical
 - Mental and emotional
- Military services
- Financial condition
 - Assets
 - Liabilities

4. Evaluation

- Alternative Plans
- Sentencing Data

5. Recommendation

Offense-based reports

In recent years, as the indeterminate sentence and its rehabilitative ideal was replaced by the determinate sentencing and the punishment ideology, the PSI has undergone major transformations. The primary purpose of determinate sentencing is not to rehabilitate, but to impose a predetermined range of fixed sentences. Determinate sentencing can take many forms - such as presumptive sentencing and guideline sentencing.

Elements of an Offense-Based Presentence Report

1. The offense

- Charge(s) and conviction(s)
- Related cases
- The offense conduct
- Adjustment for obstruction of justice
- Adjustment for acceptance of responsibility
- Offense level computation

2. The defendant's criminal history

- Juvenile Adjudications
- Criminal convictions
- Criminal history computation
- Other criminal conduct
- Pending charges (include if pertinent)

3. Sentencing options

- Custody
- Supervised release
- Probation

4. Offender characteristics

- Family ties, family responsibilities, and community ties
- Mental and emotional health
- Physical condition, including drug dependence and alcohol abuse
- Education and vocational skills
- Employment record

5. Fines and restitution

- Statutory provisions
- Guidelines provisions for fines
- Defendant's ability to pay

6. Factors that may warrant departure (from sentence guidelines)

7. The impact of plea agreement (if pertinent)

8. Sentencing recommendations

- offender characteristics
- fines and restitution
- factors that may warrant departure
- impact of the plea agreement
- sentencing recommendations

Presumptive sentencing requires a judge to choose from a narrow range of statutorily mandated sentencing options. For example, when imposing a prison sentence under California's presumptive sentencing system, a judge must choose one of three potential periods of confinement. Periods of confinement might include two, four, or six years of imprisonment with the PSI providing information on the defendant's culpability. Decisions on culpability are based on the defendant's actions and motivations in carrying out the offense. If the defendant was a primary instigator who inflicted excessive harm or damage, an aggravated term would likely be justified. In contrast, a defendant who participated in the offense under duress and did not occupy a leadership role may be eligible for the mitigated term. Under this sentencing system the primary role of the probation officer in preparing the PSI is to determine the mitigated and aggravating circumstances that apply.

Guideline sentencing further restricts the range of sentencing options by requiring judges to base their sentence on numerical formulas of offense severity and criminal history. The scores are calibrated on a sentencing grid, with judges given minimal discretion in deviating from the guidelines. In order to deviate from the guidelines, judges must state their reasons in writing. The Federal government instituted guideline sentencing in the late 1980s. At that time the Federal probation system shifted from an offender-based PSI to a offense-based PSI. Because of the restrictive nature of guideline sentencing, PSIs are no longer required in some states where guidelines sentencing was adopted. Probation officers in these jurisdictions simply complete a guideline worksheet that calculates the prescribed sentence.

Offense-based PSI are concerned with the offender's culpability and prior record. As a result, offense-based PSI's are more succinct and less concerned with the offender's personal background. The following elements constitute an offense-based PSI:

PSI Case Law

The United States Supreme Court has ruled that PSIs are mandated only in death penalty cases and there is no inherent right to a PSI absent specific state statutes. State laws vary, with some requiring PSIs for all felony cases or if the defendant faces a period of incarceration.

Other critical legal issues include the defendant's right to review the PSI, the means of addressing inaccuracies, the use of hearsay, and the use of evidence excluded from trial proceedings. Although the United States Supreme Court in two landmark cases determined that there is no denial of due process when a court considers a PSI without disclosing its contents, most states and the Federal system allow the defendant to review the report's content except in certain circumstances. For example, under Federal Rules of Criminal Procedure, Rule 32(c) (3) defendant's have access to the PSI except when the disclosure will disrupt the rehabilitation process, the information was obtained on a promise of confidentiality, or when disclosure could cause potential harm to the defendant or other individuals. However, when information is withheld the court must provide a written summary and give the defendant the opportunity to respond.

Recent Federal case law has also established that inaccuracies in the PSI are not sufficient grounds for revocation of an imposed sentence if the error is "harmless." The burden is on the defendant to prove the error was harmful. If the information is proven harmful, the courts have ruled that the court is obliged to vacate the sentence. In regards to hearsay evidence, the courts have determined that, while not admissible during trial, hearsay evidence can be included in a PSI. Discretion is left to the judge to determine which information is acceptable and what should be excluded. In the case *Gregg v. United States* (1969), the Supreme Court held, "there are no formal limitations on contents, and they may rest on hearsay and contain information bearing no relation whatever to the crime with which the defendant is charged."

In the case of *United States v Schipani* (1974), the Second Circuit Court of Appeals ruled that the exclusionary rule's prohibition against illegally obtained evidence at the trial stage is not applicable at the sentencing stage. Presently, the courts have still not addressed the issue of evidence illegally gathered solely for use in the PSI.

The United State Supreme Court, in the case *Minnesota v Murphy* (1984), established that probation officers are also not obligated to provide miranda warnings when interviewing defendants. With the exception of Oregon, defendant's do not have the right to have an attorney present at the PSI interview.

Defense-Based Presentence Reports

Historically, responsibility for the development and presentation of the PSI was solely the role of the probation officer. However, PSIs produced by probation department's have long been criticized for being routinized and biased against the defendant. This issue was compounded by the failure of defense attorneys to properly prepare their clients for the probation interview and for failing to adequately plan for the sentencing hearing.

In the 1960's a new era in the history of the PSI emerged with the pioneering efforts of Dr. Thomas Gitchoff, a professor of criminal justice at San Diego State University. To improve the quality of defense representation at the sentencing hearing, Dr. Gitchoff introduced the privately commissioned PSI. Gitchoff's reports, known as the *Criminological Case Evaluation and Sentencing Recommendation*, provided a comprehensive analysis of the offender's background and motivations that exceeded the typical PSI generated by probation departments.

At the time Gitchoff was introducing his methods to California courts, the Offender Rehabilitation Project of the Legal Aid Agency for the District of Columbia also began offering defense-based PSIs to indigent clients. This program is considered the oldest on-going defense-based PSI program in the country.

The use of privately commissioned defense-based PSIs swelled in the late 1970's and 1980s as a result of efforts by correctional reformer Jerome Miller and the National Center on Institutions and Alternatives (NCIA). Miller recognized the potential of the PSI while commissioner of youth corrections in Pennsylvania, where he used individualized

disposition recommendations to remove 400 youths from the Pennsylvania's notorious Camp Hill Prison.

Through his "Client Specific Planning" (CSP) model, Miller promoted the use of defense-based PSIs to public defender offices and nonprofit legal aid and offender-advocacy groups around the Country. Criticism of the defense-based PSI are centered on the belief that it is primarily available to only those defendant's with financial resources. However, in recent years nonprofit agencies such as the Center on Juvenile and Criminal Justice have emphasized court-appointed or public defender cases with sliding scale rates. In addition, the Washington DC-based Sentencing Project has made the promotion of defense-based PSI reports an integral part of its efforts to improve the quality of defense representation. Because of the increasing role of defense-based PSIs, a number of law schools, led by the University of Minnesota, are integrating sentencing advocacy into their curriculums.

The potential for defense-based PSIs to reduce prison commitments within a jurisdiction was demonstrated in San Francisco's juvenile justice system during the 1980s and 1990s. With the hiring of two social workers to prepare PSIs by the juvenile division of the public defender's office, and the introduction of defense-based PSI's to court-appointed attorneys by the Center on Juvenile and Criminal Justice staff, the county registered a 73% reduction in commitments to state juvenile correctional institutions.

With the growing acknowledgment for improved defense attorney representation in the sentencing process, it is likely that the use of private defense-based sentencing reports will continue to expand.

Conclusion

Despite the current trend towards offense-based sentencing, the PSI will continue to be an essential element of the American criminal justice system. The information contained in the PSI is critical in assisting judges in rendering sentencing decisions and providing vital information to correctional officials in determining classifications and release decisions. While its content and emphasis has changed in recent years, the PSI remains the most influential document in the sentencing of criminal defendants.