



United States Probation Office District of Nevada

PRESENTENCE INVESTIGATION PROCESS

STATUTORY AUTHORITY

Selection of an appropriate sentence is one of the most important decisions made in the criminal justice system. The primary vehicle to assist the court in making this decision is the presentence investigation report. These reports are completed by United States Probation Officers. Rule 32 of The Federal Rules of Criminal Procedure require a probation officer to conduct a presentence investigation report for the court in almost every case. If restitution is owed by the defendant, the rules state a presentence report must always be conducted.

Rule 32 requires the presentence investigation to do the following things: “(A) identify all applicable sentencing guidelines and policy statements of the U.S. Sentencing Commission; (B) calculate the defendant’s offense level and criminal history category; (C) state the resulting sentencing range and the kinds of sentences available; (D) identify any factors relevant to the appropriate kind of sentence, or the appropriate sentence within the applicable guideline range, and the identify any basis for departing from the applicable sentencing range.”

Rule 32 goes onto state the presentence report must contain the following information: “The defendant’s history and characteristics including any prior criminal record, the defendant’s financial condition, any circumstances affecting the defendant’s behavior that may be helpful in imposing sentence or in correctional treatment, verified information that assesses the financial, social, psychological and/or medical impact of any victim of the offense, the nature and extent of non-prison programs and resources available to the defendant, sufficient information on which to order restitution, and any other information the court requires.”

The Sentencing Reform Act of 1984 adopted a mandatory set of sentencing guidelines. In 2005 the United States Supreme Court ruled that the mandatory nature of the sentencing guidelines subjected the guidelines to the jury trial requirements of the U.S. Constitution. The Court ruled the appropriate remedy was to strike the provisions of the Sentencing Reform Act of 1984 that made the sentencing guidelines mandatory. The current system requires the sentencing court to consider the sentencing options recommended by the sentencing guidelines, but judges are free to impose any sentence authorized by law.

THE ROLE OF THE PROBATION OFFICER

The probation officer is employed by the United States District Court and serves as the independent investigator for the court. The probation officer does not work for the government's attorney, nor the attorney for the defendant. The probation officer will be open to receiving information from all parties, but cautious about adopting any parties' position outright.

The probation officer gathers and verifies important information about the offense and the defendant for inclusion in the presentence report. The officer gathers information in two primary ways: conducting interviews and reviewing documents. After completion of all necessary interviews and gathering of needed documents, the probation officer prepares the presentence report, which contains the information required by Rule 32. The probation officer is responsible for preparing all sections of the presentence report.

WHAT HAPPENS DURING THE PRESENTENCE INTERVIEW?

One of the most important parts of the presentence investigation process is the probation officer's interview with the defendant. The interview often takes place immediately following the change of plea hearing or after a guilty verdict if the defendant went to trial. If this is not possible, the probation officer will schedule a time for the presentence report interview, consulting the defendant's schedule as well as that of his/her attorney.

During the interview the officer may ask the defendant about the offense to which he/she pled or was found guilty, prior criminal history, family background, education, employment, finances, physical and mental health, and alcohol or drug abuse. The probation officer will also ask the defendant to provide the name and contact information for a family member or close friend who can verify the defendant's personal history information. The probation officer may ask the defendant to provide documentation of information provided during the interview such as

financial records, birth/marriage/divorce records, school transcripts, employment records, military service records, medical records, or medical or counseling records. If the defendant is unable or unwilling to provide this documentation, the probation officer will seek to obtain it independently. Probation officers may also visit the defendant's residence to assess the defendant's living condition, family relationships and community ties.

Defendants have the right to refuse to answer questions or provide information during the presentence interview. A defendant's attorney may have a legal or strategic basis in a given case for advising the client not to answer certain questions or to sign releases of information. The decision not to answer a question or provide information will be reported to the court with a notation the decision was made on the advice of counsel. It is possible the lack of information in the report concerning particular subjects may restrict the defendant's access to programs offered by the Federal Bureau of Prisons if the defendant is incarcerated. Lack of information on some matters may also impact the calculation of the advisory sentencing guidelines. You are encouraged to consult with you attorney regarding what information to provide during the presentence investigation interview.

Defendants should plan to be at the presentence interview for approximately one hour. Most attorneys choose to be present during the presentence investigation interview.

WHO RECEIVES THE PRESENTENCE REPORT?

The federal presentence investigation report is a confidential document. The disclosure of the presentence report to certain parties is governed by Rule 32 of the Federal Rules of Criminal Procedure, as well as local rules in the individual federal districts.

The first draft of the report (often referred to as the “initial disclosure”) is provided only to the attorney for the government and the attorney for the defendant. The defendant’s attorney should schedule a time to provide the defendant a copy of the report and review it with him/her. At this time, either attorney or the defendant may file objections to any information contained in the report. Each attorney may contest the accuracy of the information contained in the presentence report or the application of the sentencing guidelines to that information. The probation officer will list and provide a response to all objections received in an *addendum* to the presentence report. Once the probation officer has completed the addendum, the full report and addendum is disclosed to the attorney for the government, the attorney for the defendant, and the sentencing judge.

After sentencing if a defendant is ordered to serve a term of imprisonment, the presentence report will be provided to the Federal Bureau of Prisons to assist the Bureau in classifying the defendant to the appropriate security level, providing needed prison programs, and for release planning. Although the presentence report is provided to the Bureau of Prisons, it remains an official court document and may not be re-disclosed by the Bureau of Prisons to any third party.

Any other disclosure of the presentence report may only be done at the recommendation of the probation office and pursuant to court order allowing the disclosure.