

GETTING MORE INFORMATION FOR SENTENCING

Sentencing Law for Superior Court Judges

September 7, 2012

Presentence Investigation (PSI). Under G.S. 15A-1332(b), a court may, *after conviction*, order a probation officer to make a presentence investigation of *any* defendant. When a PSI is ordered a probation officer must “promptly investigate all circumstances relevant to sentencing and submit either a written report or an oral report either on the record or with defense counsel and the prosecutor present.” The PSI can include sentencing recommendations if the court requests them.

On the defendant’s motion the investigation can take place *before conviction*; such motions are addressed to the judge of the session of court for which the defendant’s case is calendared or, if the case hasn’t yet been calendared, to a resident superior court judge in the district or the chief district court judge, as appropriate.

When a person has been convicted of an offense involving impaired driving, the judge may, under G.S. 20-179.1, request a presentence investigation to determine whether the defendant would benefit from treatment for habitual use of alcohol or drugs. In DWI cases, it appears that no presentence investigation may be ordered if the defendant objects.

By default, a probation officer will conduct the study in accordance with Section of Community Corrections policy, assessing factors such as the offender’s health, family and social history, criminal history, history of substance abuse, employment status, and educational background. A judge may request a tailored report, specifying the particular types of information he or she desires.

To account for the fact that superior court judges rotate through different districts in North Carolina, a judge who orders a presentence report may, in his or her discretion, direct that the sentencing hearing in the case will be held before him or her in another district during or after the session in which the defendant was convicted. G.S. 15A-1334(c).

Presentence Commitment for Study, or Presentence Diagnostic. If the court wants more detailed information than can be obtained in a PSI, it may, in certain cases, commit a defendant to DAC for a presentence diagnostic study. Under G.S. 15A-1332(c), the court can order a presentence commitment only when the defendant has been charged with or convicted of a felony, a Class A1 or Class 1 misdemeanor, or a crime for which he or she may be imprisoned for more than 6 months.

Whether pre- or post-conviction, a presentence commitment may only be ordered with the defendant’s consent, unless the commitment is for a sexually violent predator investigation under G.S. 14-208.20. The commitment must be for the shortest period of time necessary to

complete the study, but in no case may it exceed 90 days. When the study is complete the defendant is released from DAC back to the sheriff of the county in which his or her case is pending, with the same conditions of pretrial release that existed before the commitment (unless they are modified).

Presentence commitments can be arranged through DAC's Diagnostic Classification Program, and the court can use form AOC-CR-232 to order the commitment. Any officer of the court may contact the Diagnostic Services Branch office in the George W. Randall Building, 831 West Morgan Street, Raleigh, N.C. 27699, telephone 919-838-3729 or 919-838-3734, to determine the date the commitment is to begin and the location of the Section of Prisons Diagnostic Center where the study is to take place. The decisions are based on age, gender, crime, length of sentence, and other factors relevant to the management of the prison population.

The locations at which DAC conducts diagnostics, including their rough target population are: (1) N.C. Correctional Institution for Women, Raleigh (all women); (2) Central Prison, Raleigh (male felons age 22 and older facing sentences of 10 years or more and sexually violent predators); (3) Piedmont Correctional Institution (CI), Salisbury (male felons from the Western/Piedmont counties, age 22 and older, facing sentences under 10 years); (4) Craven CI, Vanceboro (male felons from the Eastern/Central counties, age 22 and older, facing sentences under 10 years); (5) Polk CI, Butner (male felons between ages 18 and 25); (6) Western Youth Institution, Morganton (male felons age 18 and younger and misdemeanants under age 22); (7) Neuse CI, Goldsboro (male misdemeanants age 22 and older).

Availability of presentence reports. Presentence reports and sentencing plans are not public records, and they may only be made available to the defendant and his or her lawyer, the prosecutor, and the court. On the defendant's motion the court may, in its discretion, order that a report or plan be expunged from the record. G.S. 15A-1333. If a sentencing plan is completed before conviction, the information obtained in the course of preparing it may not be used by the State for any purpose at trial. G.S. 7A-773.1(d).