

Sentencing Law for Superior Court Judges

North Carolina Judicial College
September 9, 2011

Getting More Information for Sentencing

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. *Id.*

By default, a probation officer will conduct the study in accordance with Division 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. In practice, however, the judge can adopt something of an a la carte approach, specifying the particular types of information he or she desires. A copy of a streamlined PSI template that was used for a 2010 study is attached.

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 DOC 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 DOC 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 DOC's Diagnostic Classification Program, and the court can use form AOC-CR-232 to order the commitment.

Sentencing Plan through a Sentencing Services Program. Sentencing Services is a consortium of nonprofit and state-operated agencies that provides sentencing plans for certain offenders. A sentencing plan is a written report to the sentencing judge that assesses a defendant's background and then matches his or her needs to available resources. G.S. 7A-771(3a). Plans may also make a recommendation regarding an intermediate punishment. The court may, at any time prior to sentencing, request a sentencing plan for a defendant who (a) is charged with or has been offered a plea for a felony offense for which active time is authorized but not required (i.e., offenders who fall within an I/A or C/I/A cell on the felony punishment chart); (b) has a high risk of committing future crimes without some form of intervention; and (c) would benefit from the preparation of a comprehensive sentencing plan. G.S. 7A-773. Before a guilty plea or verdict, the defendant himself or herself may initiate a request for a plan—in fact, about three-quarters of plan requests start that way—and so may the prosecutor, although that is rare. In misdemeanor cases involving a Class A1 or Class 1 misdemeanor and a prior conviction level III defendant, the court (and only the court) can request a plan. G.S. 7A-773.1. Sentencing Services programs, which are organized under the Office of Indigent Defense Services, are available in over half of North Carolina's counties. Form AOC-CR-613 can be used to request a sentencing plan. Note: All state funding for Sentencing Services was eliminated in 2011.

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).

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).



NORTH CAROLINA
ADMINISTRATIVE OFFICE
of the COURTS

**Presentence Investigations Feasibility Study Report
Session Law 2009-451, Section 19.14**

May 1, 2010
Research and Planning Division



PRE-SENTENCE INVESTIGATIONS FEASIBILITY STUDY

SECTION 19.14. The Department of Correction and the Administrative Office of the Courts shall conduct a feasibility study of conducting pre-sentence investigations on all offenders convicted of felonies for which the sentencing judge has the option of intermediate or active punishments. This feasibility study shall be conducted as a pilot implementation, incorporating a variety of districts across the State reflecting both rural and urban settings, as well as diversity of programming available within the district.

The Department of Correction and the Administrative Office of the Courts shall report the results of the study by May 1, 2010, to the Chairs of the House of Representatives and Senate Appropriations Committees, the House of Representatives and Senate Appropriations Subcommittees on Justice and Public Safety, and the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee.

Session Law 2009-451

Introduction

Section 19.14 of S.L. 2009-451 directs the Department of Correction (DOC) and the Administrative Office of the Courts (AOC) to conduct a feasibility study on conducting presentence investigations (PSI) on all offenders convicted of felonies for which the sentencing judge has the option of intermediate or active punishments. The feasibility study was to be conducted as a pilot implementation, incorporating a variety of diverse districts across the state, with a report on the results of the study made to the General Assembly by May 1, 2010. The PSIs completed in this study are separate and different from the sentencing plans developed by Sentencing Services.

Current Law

North Carolina General Statutes §15A-1332 prescribes the procedure for ordering and using a presentence report, including presentence investigations and presentence commitments for study. Currently, a judge may order a probation officer to make a presentence investigation of any defendant, only after conviction, unless the defendant agrees to an earlier investigation. The court also is able to commit a defendant to DOC for a more detailed study, for a period not to exceed 90 days, if that defendant has been charged with or convicted of any felony, Class A1 or Class 1 misdemeanor, or for a crime for which he may be imprisoned for more than six months and if the defendant consents. DOC's Division of Community Corrections reports that probation officers are rarely asked to develop PSIs, also, AOC staff found that some district and superior court judges, were unaware that ordering a PSI was already available under existing law. PSIs are available to all judges in all 100 counties across the state, unlike the sentencing plans developed by Sentencing Services, which, as of May 1, 2010, are only available to 53 counties.

Preparing for the Study

A stakeholder meeting was held in October, 2009, at the NC Judicial Center, in Raleigh, to formulate an approach to complete the requirements of the special provision, discuss other initiatives that may be relevant to the pilot study, and identify specific areas that should be addressed. Representatives from the AOC, the DOC's Division of Community Corrections, the Office of Indigent Defense Services, and the NC Sentencing and Policy Advisory Commission attended the stakeholder meeting.

In late January 2010, the Director of the AOC mailed a letter (*see* Appendix A) to all of the chief district court judges and senior resident superior court judges inviting them to volunteer their districts to participate in the PSI study. Responses were requested by February 3rd, however, due to challenges such as the closings and delays that resulted from significant snowfall across many portions of the state and a signature being needed from a judge who was out on rotation, the deadline was extended. Four Superior Court districts volunteered to participate:

- Superior Court District 7B/C (Edgecombe and Wilson Counties)
- Superior Court District 14 (Durham County)
- Superior Court District 16B (Robeson County)
- Superior Court District 30B (Haywood and Jackson Counties)

Two District Court districts initially volunteered:

- District Court District 14 (Durham County)
- District Court District 16B (Robeson County)

District Court District 16B did not participate because that district does not hear felony cases in District Court (the special provision explicitly stated this pilot was for “all offenders convicted of felonies for which the sentencing judge has the option of intermediate or active punishments.”) Of the districts that volunteered, there was a mix of characteristics: single and multi county districts; urban, suburban, and rural districts; eastern, central, and western counties; those that had a Sentencing Services program in the district and those that did not.

AOC’s Research and Planning Division sent a letter (*see* Appendix B) to the districts that had volunteered and qualified for the study, notifying them that they had been selected to participate and providing some additional details on the process and logistics of the pilot study.

In February, 2010, a meeting was held between the AOC and DOC staff to prepare to start the pilot study. DOC developed a revised, streamlined version of the PSI instrument that would be used during the pilot study. (A sample copy of the PSI is attached as Appendix C.)

The streamlined PSI contained the following types of information:

- Sentencing Recommendations
- Offender Trait Inventory (OTI) Score
- Criminal History
- Crime Version Information
- Employment/Financial History and Status
- Education/Vocations History and Status
- Military Service History
- Substance Abuse Assessment/TASC Screening Results
- Mental/Physical Health Assessment

DOC arranged for the Department of Health and Human Services’ Treatment Alternatives to Safer Communities (DHHS-TASC) staff to perform a substance abuse screening/assessment on the defendants, if appropriate.

DOC and TASC agreed on a turn around time of 5-10 working days from the time they received the request to the point at which they completed the PSI and assessments and returned the report to the judge. It was decided that the pilot study would begin March 1 and end on April 23, 2010

Staff from DOC was initially worried there would be too many PSIs requested to complete in a timely manner with the limited resources available. Jointly, DOC and TASC committed to being able to complete 10 PSIs each week. Superior Court judges were encouraged to request PSIs as early in the week as possible to ensure they would be returned during the same session of court. There was concern that if the PSI was not returned to the judge within the week, there would be either a significant delay in the defendant receiving a sentencing hearing or the PSI would be disregarded, since some smaller counties do not hold sessions of Superior Court each week.

Results of the Study

The pilot study was conducted from March 1 to April 23, 2010. During this period only three PSIs were requested. The following is highlighted information about the PSIs that were completed:

- All three PSIs were requested by superior court judges; one from District 7B/C in Wilson County and two from District 30B in Haywood County
- The turn around time (from date the PSI was ordered to date the completed report was returned to the judge) ranged from one day to 39 days (the judge ordered this PSI several weeks before the sentencing hearing was scheduled to occur)
- All three PSIs included the TASC assessment, which took between 2.0 hours and 2.5 hours each to complete
- The total time reported to complete the PSIs (including the TASC assessment) ranged from 5.0 hours to 7.5 hours
- The defendants involved in all three PSIs were cooperative with the process
- The recommendations from all three PSIs were followed by the sentencing judge
- All three PSIs recommended Intermediate Punishment, Intensive Supervision, and in addition:
 - One PSI recommended electronic monitoring, Criminal Justice Partnership Program (CJPP) services, and that the defendant earn the GED
 - One PSI recommended a residential program (Drug and Alcohol Recovery Treatment (DART), 28 or 90 day program)
 - One PSI was for a suspended sentence of Intermediate Punishment for a contingent case (the defendant was tried in two different cases and was given an active punishment in one case and a suspended sentence and place on probation in the second case, with the provision that the period of probation will begin when the defendant is released from the active sentence or at the completion of post-release supervision or parole)

Staff from the AOC’s Research and Planning Division conducted a post test survey of the judges who were scheduled to hold court in the participating districts during the time period of the study and found the following to be the most common reasons for the infrequency of PSI requests:

- The judge did not hear any felony cases in which a PSI would apply; either the charge did not fall into a cell on the sentencing grid that had an option of active or intermediate punishment, or the length of punishment was equivalent to time already served
- All applicable cases were disposed by plea that included a sentencing recommendation

Of the judges who provided feedback, but who did not order a PSI during the pilot period, they all stated that if a PSI is prepared and made available to them prior to a sentencing hearing they would find it to be a useful tool that would provide them with valuable information upon which to base their sentencing decisions.

Although few PSIs were ordered during this pilot project, the pilot project did demonstrate the value that some judges place on presentence information. The streamlined PSI that DOC developed for this study contained the key elements that participating judges found most useful. Specifically, a participating judge noted the high value of the streamlined PSI. In the five page document, he was able to access the offender risk of re-arrest as well as substance abuse treatment recommendations (if applicable). He said, “The length and detail of this [report] was perfect.”

Future Implications

Current law permits a judge to order a presentence investigative report. This provision, as was the case for the streamlined PSI developed for the pilot project, is used very infrequently given the number of overall guilty pleas and convictions (in all cases under existing law and for the specified types of felonies in the pilot project).

The greatest barriers to wider use of presentence investigative reports seem to be the high volume of plea agreements that already include sentence recommendations and resource constraints. First, it would take a major shift in practice among prosecutorial staff, defense attorneys, and judges to change current accepted practice of offering plea agreements in tandem with a sentencing recommendation. One option would be for presentence investigative reports to be completed on all defendants who, if convicted, could be sentenced to active time in excess of the time they have already served. PSIs would potentially need to be completed on those whose plea to or conviction of their highest charge would result in an active sentence since those defendants might ultimately plead to or be convicted of a lower charge where an active sentence is only one option.

Second, there would be an enormous resource demands on the court system if sentencing hearings were held separately from plea acceptance. The separate sentencing hearings were accomplished during the PSI within the same weekly session of Superior Court when requested because the requests were limited to the cases identified by the presiding judge and because DOC coordinated resources to make it possible to accomplish studies in a timely manner. In order to prevent the need to hold separate sentencing hearings if PSIs were more widely completed, they would need to be completed before the case was scheduled on the docket (for trial or plea). There would also be extensive resource demands for DOC were the Department ordered (either under existing statutory provisions or any new provisions) to complete a large volume of PSIs. As noted above, DOC and TASC could be expected to expend approximately six hours of personnel resources for every PSI ordered.

Given the value placed on PSI information by many sentencing judges, it would be useful to consider options for providing the resources and infrastructure to provide requested information prior to sentencing in more cases that current practice accomplishes.

North Carolina Department of Correction
 Division of Community Corrections
 Pre-sentence Investigation Report

Requested by: _____ Prepared by: _____

Date Requested: _____ Date Prepared: _____

Defendant's Identification

Names: _____
List every name the defendant has used

Date of Birth: _____ Place of Birth: _____

Race: White Black American Indian
 Asian Unknown

Gender: Male Female

Marital Status: Single Married Separated
 Divorced Widowed Unknown

Physical Address:

Mailing Address:

How long at current residence? _____

Lives With: _____
(name, relationship, phone)

Own Room Rent House Apt
 Mobile Home

Offenses	Docket No.	Offense Date(s)

District Atty.: _____ Defense Atty.: _____ Retained
 Appointed

Plea: _____

OTI Score:

Sentencing Recommendations: _____

OTI Questions with Point Values

1. Convictions (0, 1, 2, 3)

Select all applicable and add for score:

- 1 - DWI
- 2 - Housebreaking, B & E, Burglary, Stolen Property
- 2 - Robbery
- 3 - Forgery
- 0 - Other

Total

2. Financial Status (0, 3, 6)

- 0 - Self sufficient, capable of handling finances
- 3 - No known difficulty
- 6 - Some or severe difficulty in meeting court and other obligations

Total

3. Marital (0, 3, 5)

- 0 - Married/Widowed
- 3 - Separated/Divorced
- 5 - Single

Total

4. Attitude (0,6)

- 0 - Motivated to change, receptive to assistance
- 6 - Dependence or unwilling to accept responsibility, or rationalizes behavior, negative, not motivated to change

Total

5. Drug Addiction (0, 5)

- 0 - No history of drug addiction
- 5 - Past history of drug addiction

Total

6. Employment (0, 4)

- 0 - Employed more than 7 months
- 4 - Employed less than 7 months during the past 12 months

Total

7. Employment (0, 4)

- 0 - Employed, passing in school
- 4 - Unemployed/Unstable employment, problem student

Total

8. High School Dropout (0, 3)

- 0 - Finished or in school
- 3 - High school dropout

Total

9. Gender (0, 7)

- 0 - Female
- 7 - Male

Total

10. Age (enter points based on age -see instructions)

Total

OTI Score

Level	Average Risk	OTI Range
Minimum	9%	00-15
Low	14%	16-25
Moderate	23%	26-35
High	31%	36+

Chart reflects the average risk of rearrest within the 1st year of supervision based upon the OTI score

Offender Traits Inventory (OTI) Assessment Instructions

The purpose of the OTI is to assess the offender's risk of rearrest (further criminal involvement) and not dangerousness or propensity toward violence

1. Convictions

This item looks at the offender conviction history. It applies only to the offense(s) for which the offender was actually convicted - not arrested. Should an offender have multiple prior convictions, check all of the categories that apply; maximum points = 10

The crime categories with greater than 0 points assigned are those that were shown to be predictive when the OTI was developed. If an offender's offense cannot fit into any of these categories (for example, bribery), check the box marked "Other," and zero points will be assigned since it was not among the crimes determined to predict recidivism.

2. Financial Situation

This is an indication of one's ability to manage his financial situation

- 0 Self sufficient, capable of handling finances - Earns enough income to meet obligations and maintain savings.
- 3 No know difficulty - Can meet immediate expenses, but needs limited budgeting and counseling, including offenders where there is insufficient information to make a determination.
- 6 Some/severe difficulty in meeting court and other obligations - Sufficient resources with poor management of money or insufficient financial resources; heavy debt, totally incapable of managing financial matters.

3. Marital

The intent of this category is to evaluate the supportive relationships that exist.

- 0 Married/widowed - Currently married and living with spouse or spouse deceased
- 3 Separated/divorced - Married at one time, currently separated from spouse or legally divorced
- 5 Single - Never been married

4. Attitude

This is a judgmental question that is dependent on the officer's knowledge of the offender.

5. Drug Addiction

Serious problems: Major abuse or addiction, needs treatment for heroin, cocaine, barbiturate or other drug dependence.

6. Employment during last 12 months

This item refers to all offenders who are members or potential members of the labor force. The issue here is not the number of jobs an offender may have had, but the actual length of time spent employed. In determining the score, consider the following:

- The value is scored based on full-time employment - 30 hours or more per week;
- Part-time employment - less than 30 hours per week; give only half the value of full-time;
- Students, homemakers, retired persons, or physically disabled persons are not considered part of the labor force; scoring is based on a percentage of time in the labor force.

7. Unstable Employment/Problem Student

Concerns those offenders who have shown a tendency to work irregularly, lose jobs as a result of absenteeism or in other ways there is an indication that continued employment is unlikely.

Student - Offender attending school and having school related problems

8. High school dropout (self explanatory)

9. Male (self explanatory) Gender is scored 7 points for male and 0 points for female

10. Age (self explanatory)

AGE	POINTS	AGE	POINTS
< 19	8	47-48	-1
19-21	6	49	-2
22-24	7	50-51	-3
25-32	6	52	-4
33-35	5	53	-5
36-38	4	54-55	-6
39-40	3	56	-7
41-42	2	57	-8
43-44	1	58	-9
45-46	0	59	-10
		60+	-11

Criminal History

List Prior Convictions and Dates *(run global CRC)*

Convictions	Dates

History of Prior Probation/Parole Supervision Periods *(from PP05 if applicable)*

Begin Date	End Date	Type of Release

Crime Version Information

Court Record Crime Version *(attach additional pages if necessary)*

Defendant's Version of Crime *(attach additional pages if necessary)*

Co-defendant(s)? Yes No

If yes, Name(s) and Relationship(s) _____

Financial/Employment/Education/Military

FINANCIAL

Total Monthly Income: \$ _____ Sources of Income: _____

Child Support Payment: \$ _____

Do you earn enough income to meet financial obligations? Yes No

If no, do you need financial assistance? Yes No

EMPLOYMENT STATUS

Employed? How long? Unemployed? How long?

Verified by: Phone Letter Recent pay stub

Current Employer _____ Employer Phone _____

Employer Address _____ Hours _____

Previous Employer _____ Dates Employed _____

(if employed less than 1 year)

EDUCATION/VOCATIONAL SKILLS

Highest grade completed: _____

Name and Location of School (list most recent first)	Dates Attended	Degree, Diploma, Certificate

Specialized skills or training: _____
_____Professional License(s): _____
_____**MILITARY**
 None Active Reserves Inactive

Branch of Service _____ Date of Enlistment _____

Type of Discharge _____ Date of Discharge _____

Substance Abuse The defendant has no history of alcohol or drug use and no history of treatment for substance abuse.

Which of the following substances has the defendant used?

- | | | |
|---------------------------------------|---|--|
| <input type="checkbox"/> Alcohol | <input type="checkbox"/> Heroin/Opiates | <input type="checkbox"/> Marijuana |
| <input type="checkbox"/> Barbiturates | <input type="checkbox"/> Cocaine | <input type="checkbox"/> Hallucinogens |
| <input type="checkbox"/> Crack | <input type="checkbox"/> Inhalants | <input type="checkbox"/> Amphetamine/Methamphetamine |
| <input type="checkbox"/> Other | | |

When was alcohol or controlled substance last used? _____

What is the defendant's drug of choice and frequency of use? _____

Has the defendant attended prior treatment? Yes No

If yes, what was the outcome of treatment? _____

TASC screening results: _____

*(need signed release of information)***Mental/Physical Health**Any known mental health issues? Yes NoIs the defendant receiving counseling? Yes No

Doctor's name: _____

Mental health medications (List): _____

Any known physical health issues? Yes No

List any MH general observations (if applicable) _____