



Pre-Sentence Investigation and Sentencing Process

Presented to: Montana Criminal Justice Oversight Council

March 2024

About CJI

- CJI bridges the gap between research and practice with data-driven solutions that drive bold, transformative improvements in adult and youth justice systems.
- CJI provides non-partisan analysis, research, technical assistance, program evaluation, and training to jurisdictions throughout the country.



The CJJ Team



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Presentation Overview

- Purpose and function of PSIs as part of sentencing
- How Montana currently uses the PSI
 - CJOC Priorities around improving sentencing processes
- Themes from 50-state evaluation of PSI Statutes
- State specific examples: Presenting information to court for sentencing
- Discussion

Definition and Purpose of PSI

Pre-Sentence Investigation Report:

A report meant to provide information to the court on the defendant's personal history and criminal conduct to promote individualized sentencing.



How Are PSIs Used Beyond Sentencing?

- ✓ Reentry planning

- ✓ Visitation decisions/classification while in custody

- ✓ Programs required and treatment options

- ✓ Beneficial programming/benefits eligibility

- ✓ Medical care decisions

Current MT Statute Allows for Varying Levels of Detail Within PSIs

46-18-111 and 46-18-112

- The district court may request and direct the probation and parole officer to make a presentence investigation and report
- PSI should be created within 30 business days of the plea or the verdict or finding of guilty
- **Content must include:** defendant's social and criminal history, current offense, behavioral health background, employment/education
 - **Optional/case-specific information:** mental health, substance use, and physical evaluations may be ordered

Improving the Sentencing Process

State PSI Processes



- ▶ PSIs tailored to offense type
- ▶ Consistency across the state when ordering PSIs
- ▶ What kinds of assessments are included in PSIs
length of time PSI writers have to complete their reports
- ▶ Factors outside the PSI process impacting sentencing

50 State Review

CJI reviewed statutory language around the PSI focused on four categories:

- Offense types triggering PSI
- Unique PSI information
- Assessments
- Timeline for PSI



Overview of Themes



Circumstances triggering PSIs

30 states mandate a PSI for a felony or serious misdemeanor



PSI Content

Almost all states include the same content; some PSIs more detailed with results from mandated evaluations



Assessments

States vary in the types of assessments (RNR, mental health) that are mandated in all PSIs, as opposed to triggered by underlying offense



PSI completion/ submission time varies

Statutes vary between listing time for PSI completion and timeline for submission to court



Circumstances Triggering PSI

- A majority of states (30) specified PSIs should be ordered for felonies or serious misdemeanor charges only
- Nine states contained language that a PSI can be ordered for any defendant, regardless of their charges

There were some states that listed circumstances where the PSI could be waived:



“Other than for felony sex offenders being considered for probation, the court need not order a presentence report of investigation where both parties agree to the imposition of a specific sentence, provided there is a finding made for the record as to the defendant’s history of delinquency or criminality, including any previous sentence to a term of probation, periodic imprisonment, conditional discharge, or imprisonment.”



Common PSI Content Across States

In general, common content in the PSI include:


- Prior criminal history
- Known criminal affiliations
- Circumstances of the offense
- Victim impact/restitution amount
- Financial, social, and psychological status of the defendant
- Prior psychological evaluations
- Family/marital situation




Unique Information in the PSI

Some states tailor information requirements for the PSI by charge and prior history, including:

"Must include a recommendation for treatment"




VT



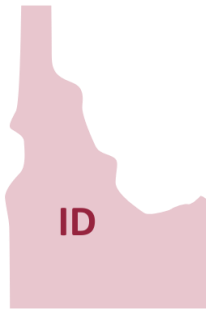
WA

"Anyone with a controlled substance violation shall receive a substance use eval."

"Shall identify prior civil commitments"



NJ



ID

"Must include past psychological evaluations"

"Shall identify treatment needs"



KY



MT

"Must contain recommendation for least restrictive environment"



WY



Assessments

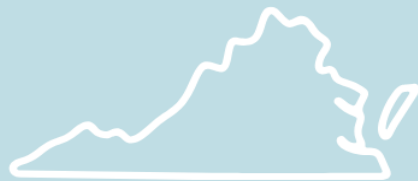
CJI also looked at whether there were requirements for any type of assessments as part of the PSI statute:

10 states have PSI statutes that explicitly require physical and/or mental health assessments as part of the PSI

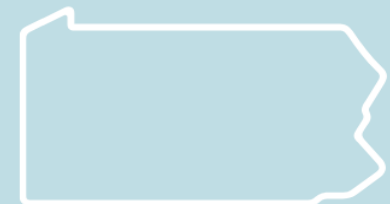
17 reference RNR assessment within PSI statute; 5 additional states provide policy guidance on RNR as part of PSI process

Two state-specific RNR assessments at sentencing:

Virginia: at-sentencing risk assessment incorporated into guidelines, overseen by VA Criminal Sentencing Commission



Pennsylvania: Sentence Risk Assessment Instrument became effective July 1, 2020





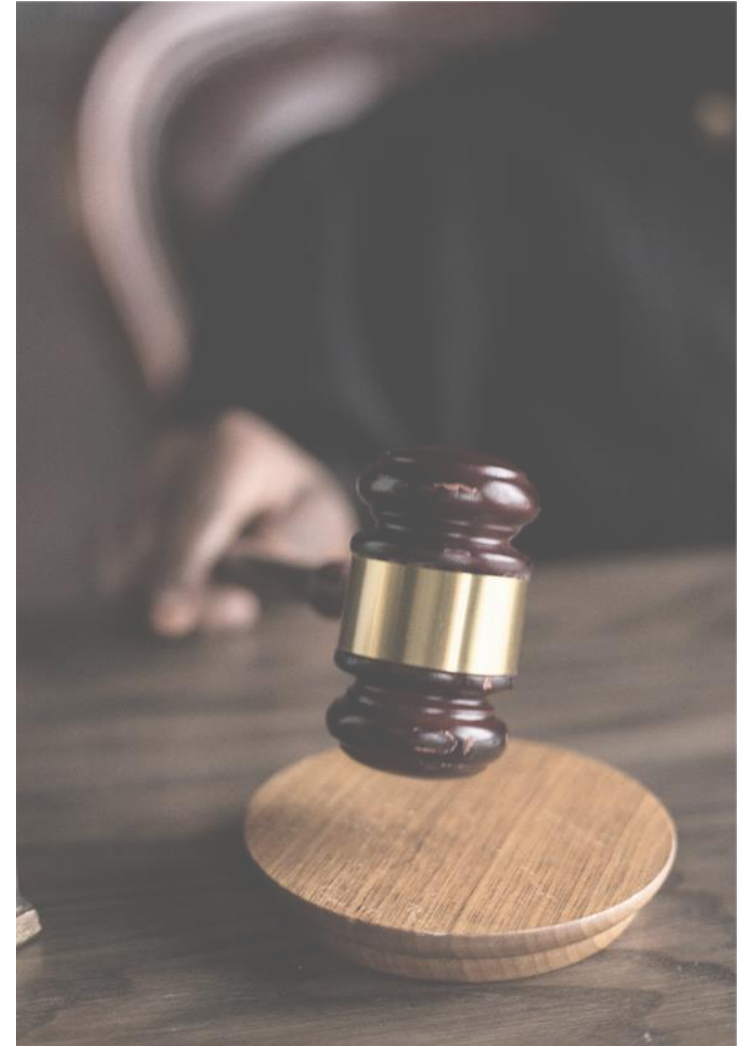
PSI Completion Timelines

PSI statutes had different markers for PSI timeline:

- Some statutes refer to how many days PSI writers had to complete the PSI
- Others provide guidance on how many days notice courts needed to receive the PSI before sentencing.



State Examples: Presenting Information to Court at Sentencing



Strategic Sentencing Responses

Jurisdictions have made different attempts at streamlining accurate information and resources to judges to improve the sentencing process:

Tiered PSIs

Training for judges on how to use information in PSI + guidance when PSIs are not required

Electronic inclusion of documents such as risk assessments that allow for easier updates

Legislation that focuses judges on behavioral health assessment and treatment

Hennepin County, MN: Tiered PSI

What is a tiered system? Different categories of information contained within the PSI based on nature of the offense/case circumstances

Problem: High PSI caseloads, maxed out FTE for PSI writers, and budget concerns

Solution: A workgroup of judges, defenders, prosecutors, and court staff developed the tiered PSI system to allocate time and resources to the cases needing most information

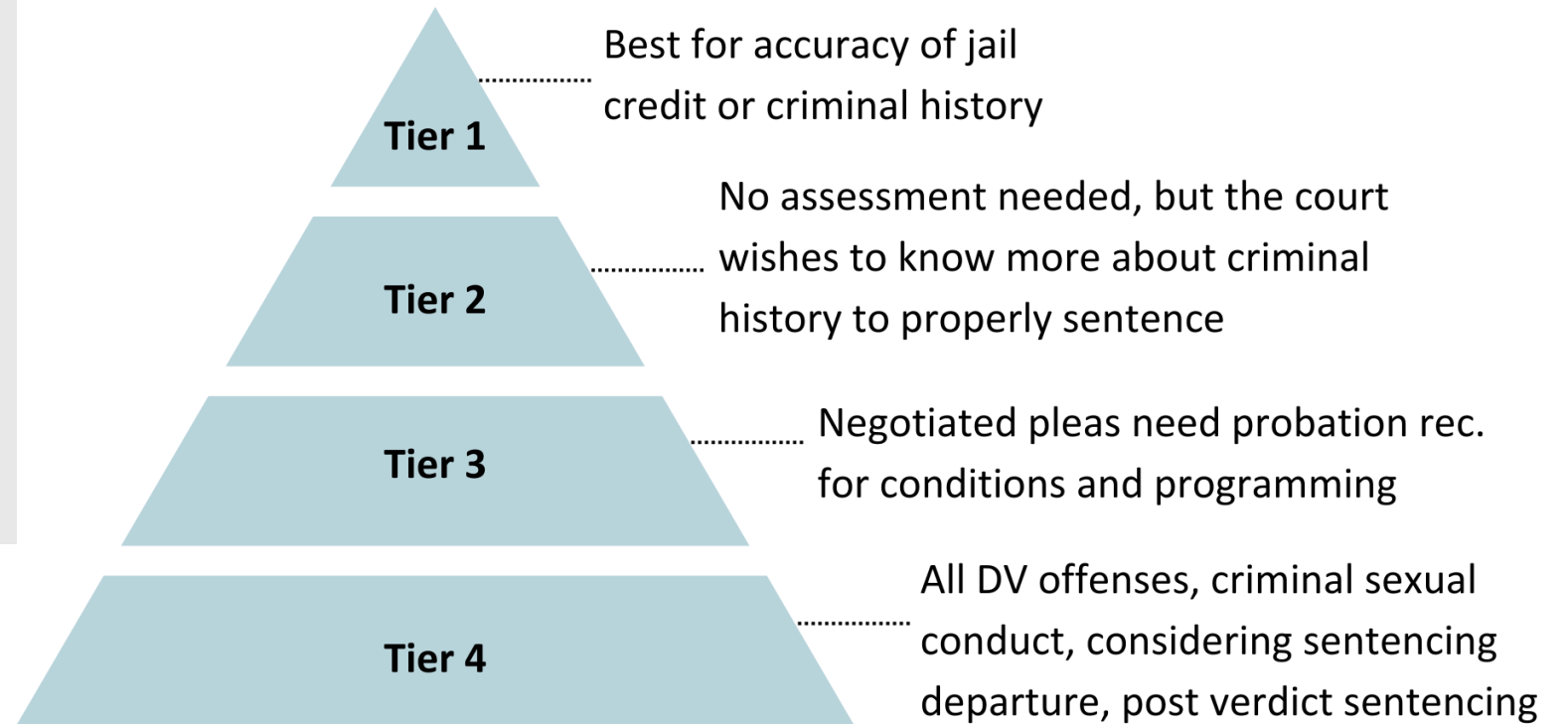
Procedure: Tiered system complies with PSI/sentencing statutes but didn't require additional legislation. Added as administrative guidance to Felony Investigation Unit

Implementation: Workgroup met in 2017 and implemented pilot in Spring 2018

- Workgroup members brought tiered system back to their respective departments
- Felony Investigation Unit developed "PSI Academy" to train all practitioners in new tiered PSI system

Hennepin County, MN: Tiered PSI

MN PSI Statute: “The court shall cause a presentence investigation and written report to be made to the court concerning the defendant’s individual characteristics, circumstances, needs, potentialities, criminal record and social history, the circumstances of the offense and the harm caused by it to others and to the community.”



Connecticut: Tiered PSI

Requires PSIs for all felonies, DV cases, cases with victims, and sex offenses.

Short form PSI: A short form PSI can be ordered if a PSI has been done in the past five years. Short form focuses on criminal history and family background.

Long form PSI: includes more information, such as employment/housing/behavioral health assessments.

- **Brief plan for community supervision:** information about treatment, housing, and other resources needed to support supervision within PSI.
- Judicial Branch Court Support Services Division Policy

Kansas: Substance Use Sentencing and Treatment Response

Mission: The SB 123 Program ensures public safety while effectively addressing prison recidivism by providing community-based substance abuse treatment to targeted, non-violent, drug offenders having substance abuse disorders.

Problem: Lack of prison bed space and need for better connections to substance use treatment for those suffering with addiction

Solution: SB 123 developed guidance for judges to sentence individuals to mandatory substance use treatment where an underlying need has been flagged through comprehensive assessment

History of SB 123 Eligibility:

- Started in 2003 with drug possession offenses with no prior convictions of drug trafficking, drug manufacturing or drug possession with intent to sell
- Expanded to include low-level distribution offenses
- In July 2023, eligibility expanded to include certain non-person/non-drug offenses related to substance use (theft/burglary)

Kansas SB 123: How it Works

Implementation:

- Treatment providers and Court Services trained in completing client placement form that outline need and level of care needed

Procedure: Individual is assessed to determine risk level and must score “high risk” for substance use needs, be a KS resident, and be charged with an eligible offense. This treatment assessment process is part of the broader PSI process.

- Once presentence assessment confirms eligibility, defendant is sentenced to applicable treatment level per assessment
- All people sentenced under SB 123 are entitled to at least 18 months of treatment

Process Oversight: The Kansas Sentencing Commission provides administration, monitoring, evaluation, payment services, publications, and informational meetings for the SB 123 program.

Washington: Mental Health Sentencing Alternative

Problem: Limited mental health services available within WA state prison facilities and individuals who would respond better to treatment in the community had no alternatives to traditional prison sentences

Solution: Legislation and Revised Code of WA created a mental health sentencing alternative in 2021.

Procedure: Court determines eligibility for the **mental health sentencing alternative** in cases involving:

- a) A felony that is not a serious violent offense or sex offense;
- b) Diagnosis with a serious mental illness recognized by the diagnostic manual in use by mental health professionals at the time of sentencing;
- c) The defendant and the community would benefit from supervision and treatment, as determined by the judge; and
- d) The defendant is willing to participate in the sentencing alternative

Logistics: Court receives a PSI that contains a proposed treatment plan, a proposed monitoring plan, conditions, and release of information to confirm treatment and monitoring plan

Nevada: PSI Guidance through Training + PSI Exceptions

Support for decision-makers using PSI: “Each court in which a report of a presentence investigation can be made must ensure that each judge of the court receives **training concerning the manner in which to use the information included in a report of a presentence investigation for the purpose of imposing a sentence**. Such training must include, without limitation, education concerning behavioral health needs and intellectual or developmental disabilities.”

Carves out exceptions to PSI requirement: NV required PSIs for all felonies unless the sentence was

- set by the jury OR
- a PSI was developed within the last 5 years

Alternative to PSI: “If the Division does not make a presentence investigation and report on a defendant pursuant to subsection 1, the Division shall, not later than 45 days after the date on which the defendant is sentenced, make a **general investigation** and report on the defendant”

- Less intense tier could involve a post sentence investigation that could inform someone’s time on supervision

Iowa: Serious misdemeanors trigger PSIs only in exceptional circumstances

The court may order a presentence investigation when the offense is a **serious misdemeanor** only upon a finding of exceptional circumstances warranting an investigation. A presentence investigation ordered by the court for a serious misdemeanor shall include information concerning **only the following**:

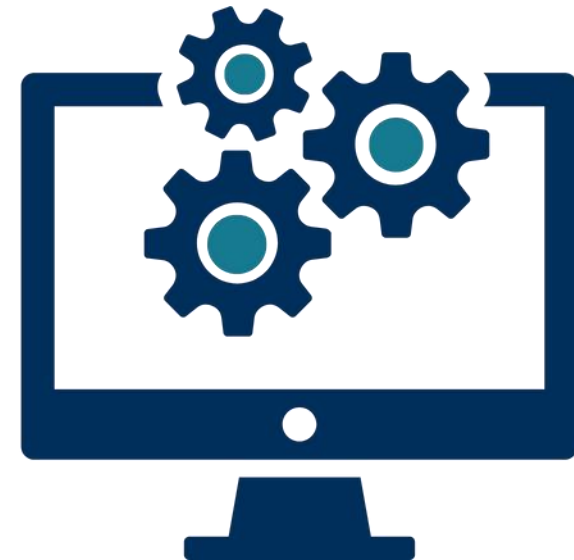
- (1) A brief personal and social history of the defendant.
- (2) The defendant's criminal record.
- (3) The harm to the victim, the victim's immediate family, and the community, including any completed victim impact statement or statements and restitution plan.

Indiana: Tech improvements to PSI process

Indiana put policies in place to make their risk assessment and PSI electronically connected by allowing the officer to digitally associate a completed risk assessment to the PSI Report they are preparing. Users also have the ability to attach external documents to the PSI (probable cause affidavits, statements from the defendant, as well as statements from the victim.)

Updated Policy:

- Probation departments now have a standardized electronic means for completing a PSI Report, which ensures consistency in how information is presented to trial courts across the state.
- Probation departments can view completed PSI Reports statewide.
- For repeat offenders, probation officers have the ability to create a new PSI Report utilizing information stored from a previous report.



Role of State Sentencing Commissions:

- Establish sentencing guidelines to reduce sentencing disparity
- Oversee treatment opportunities
- Determine presumptive probation vs presumptive prison guidance
- Evaluate and contain corrections costs monitoring, impact assessment, and coordination components to evaluate sentencing policy in relation to correctional resources

Idea from commission work:

Take data on sentencing averages per offense and incorporate this information into the PSI as context for the judge



Sentencing Reform Across States: Information provided to the court post-sentencing

- Compassionate release review: reconsideration of sentence where new information is brought to the court about family circumstances/medical background (MA: medical parole 2018)
- Reconsidering weight given to criminal history at sentencing
- Earned release for prisoners who complete certain rehabilitation programs (38 states)
- Second look review of lengthy sentences
 - California AB 2942 (2018) removed the Parole Board's exclusive authority to revisit excessive sentences and established a process for people serving a sentence of 15 years to life to ask the district attorney to make a recommendation to the court for a new sentence after completing half of their sentence or 15 years, whichever comes first.
- Reducing mandatory minimums

Discussion/Questions?

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