

<p style="text-align: center;"><b>STATE OF VERMONT</b> <b>AGENCY OF HUMAN SERVICES</b> <b>DEPARTMENT OF CORRECTIONS</b></p>	<p style="text-align: center;"><b>Presentence Investigation (PSI) Reports</b></p>	<p style="text-align: center;"><b>Page 1 of 8</b></p>						
<p><b>CHAPTER:</b> DISTRICT OFFICES GENERAL</p>	<p style="text-align: center;"><b># 342.01</b></p>	<p style="text-align: center;"><b>Supersedes:</b> #342.01, <i>Presentence Investigation (PSI) Reports, dated 3/1/12</i></p>						
<p><b>Local Procedure(s) Required:</b> No <b>Applicability:</b> All staff (including contractors and volunteers) <b>Security Level:</b> “B” – Anyone may have access to this document.</p>								
<p><b>Approved:</b></p> <table style="width: 100%; border: none;"> <tr> <td style="text-align: center; border: none;"> <p>_____</p> <p>SIGNED</p> </td> <td style="text-align: center; border: none;"> <p>_____</p> <p>10/15/2021</p> </td> <td style="text-align: center; border: none;"> <p>_____</p> <p>12/01/2021</p> </td> </tr> <tr> <td style="text-align: center; border: none;"> <p><b>James W. Baker, Commissioner</b></p> </td> <td style="text-align: center; border: none;"> <p><b>Date Signed</b></p> </td> <td style="text-align: center; border: none;"> <p><b>Date Effective</b></p> </td> </tr> </table>			<p>_____</p> <p>SIGNED</p>	<p>_____</p> <p>10/15/2021</p>	<p>_____</p> <p>12/01/2021</p>	<p><b>James W. Baker, Commissioner</b></p>	<p><b>Date Signed</b></p>	<p><b>Date Effective</b></p>
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**PURPOSE**

This purpose of this policy is to establish preparation best practices and formatting standards for all types of presentence investigation (PSI) reports. This includes training requirements and identification of which correctional staff may conduct a PSI.

**AUTHORITY**

13 V.S.A. § 7041(h); 28 V.S.A. §§ 202, 204, 204a; 33 V.S.A. §§ 5117, 5119(f)(6), 6911; V.R.Cr.P. 32 (c).

**POLICY**

The Vermont Department of Corrections’ (DOC’s) policy is to produce PSI reports that provide timely, relevant, and accurate information to enable the court to make informed sentencing decisions and to assist the Department in the classification process.

**GENERAL GUIDELINES**

**A. Presentence Investigation and Report – General**

This policy covers PSIs for all individuals facing sentencing. There are some differences for cases in which individuals face sex-offense sentencing and those are noted throughout this document.

1. A PSI report:
  - a. provides the sentencing judge information concerning the individual facing

- sentencing and their offense circumstances;
  - b. provides the judge with relevant information on which to base sentencing decisions; and
  - c. reflects the professional judgment of, and assessment by, the DOC regarding the individual's risk management.
2. PSI reports are used in the case planning process within correctional facilities and probation and parole offices. PSI reports are also used by the Parole Board when making a release decision and setting parole conditions.
  3. Pre-sentence Investigators in the district where the crime occurred are responsible for completing PSIs.
    - a. Interoffice communication and collaboration are necessary when crimes are committed in one district and the individual facing sentencing resides in another.
    - b. Other circumstances, such as the availability of trained staff, change of venue, may require other Probation and Parole offices to complete the PSI.
  4. Staff who conduct PSIs (or "investigating staff") shall organize the PSI report using the appropriate format provided by the Department.

**B. Information Quality**

Investigating staff shall ensure that the PSI report- to the fullest extent possible- contains verified, relevant, and credible information. The Investigator shall also indicate the source of verified information in the PSI report.

**C. Disclosure**

PSI reports, and their contents are confidential and privileged. Staff shall not disclose a PSI report, or its contents, to anyone outside the Department, without the permission of the court, with the following exceptions:

1. Pre-sentence Investigators shall disclose a PSI report to the court;
2. Upon completion of a PSI report for a sex offense listed in 28 V.S.A. § 204a(a), staff shall submit copies of the PSI report to the State's Attorney and defendant's attorney.
2. In cases in which an individual is convicted of a sex offense against a child, staff shall send the PSI report to the Department for Children and Families (DCF).
3. Staff may release the PSI report to a treatment provider for treatment or psychosexual evaluation purposes, if the court approves the disclosure. To request approval from the court, staff shall complete a *Treatment/Assessment Release Letter for Sex Offenders* form and present it to the court.

**D. File Maintenance**

1. Staff shall document all PSI information in the Offender Management System (OMS) as individual booking episodes per investigation.
2. Staff shall save the finished electronic copy of the PSI report to the designated office folder for PSIs.
3. Staff shall upload PSI reports into OMS in the investigation's booking episode using

- document category "Presentence Investigation Report."
4. The District Manager shall designate a secure location for the paper version of all PSI reports and ensure that staff place every PSI in this secure location.
  5. Staff shall shred any non-electronic material gathered to create the PSI report after the appropriate information is entered into OMS and the report is completed.
  6. Staff shall shred or otherwise destroy all relevant information obtained from DAIL or DCF, including any Adult Protective Services (APS) Reports, immediately upon completion of the PSI.
  7. Staff shall upload all affidavits, psychiatric/psychological reports, and treatment summaries used in the PSI into their respective areas in OMS and using the pre-defined document categories.

#### **E. Timelines**

1. The Pre-sentence Investigator shall ensure that the PSI report is filed with the court:
  - a. within 60 days of being ordered for sex offense PSIs;
  - b. within three weeks of being ordered for non-sex-offense PSIs; or
  - c. after an extension is requested, and granted, if not filed with the court within the timelines provided in this section.
2. If the Pre-sentence Investigator is unable, for good cause, to meet this deadline, they may file a motion to continue, asking the court for an extension. Investigating staff shall submit this request to the court as soon as they know they will be unable to meet the deadline.
3. When an individual is sentenced, field staff of the office from which the PSI was conducted shall upload the PSI report and affidavits to OMS within five business days of sentencing. Staff shall review the final PSI report for redactions prior to uploading and ensure that the redacted version is uploaded.

#### **F. Investigation**

1. When conducting a PSI, investigating staff shall interview:
  - a. the individual facing sentencing;
  - b. the survivor(s), or next of kin or guardian of the victim(s) (if relevant); and
  - c. any other individuals who can verify required information.
2. The courts have ruled that PSI interviews are a critical stage of the sentencing process. If the defendant requests counsel, investigating staff shall allow counsel to attend the interview.
3. Investigating staff shall:
  - a. ask the individual facing sentencing for a written statement (Defendant Statement Regarding Offense) of their version of the offense and the circumstances that led up to the offense and
  - b. include this statement in the PSI report. The statement shall include:
    - i. the attitude of the individual facing sentencing;
    - ii. whether the offense was premeditated;
    - iii. any statements of remorse or acceptance of responsibility, including acknowledgement of:

- a) specific allegations; and
  - b) harm to the victim or community.
4. Investigating staff shall request a written statement (Victim Impact Statement), from the victim/survivor, or from the victim's guardian or next of kin in cases in which the victim/survivor is not competent or is deceased. Investigating staff shall include this statement in the PSI report.
- a. The Victim Impact Statement may include any financial, emotional, or physical consequences resulting from the offense.
  - b. The Victim Service Unit (VSU) is a critical resource for expertise and guidance on matters related to victim/survivor support and information. Presentence Investigators are strongly encouraged to utilize the VSU as a conduit for obtaining victim input and as a support option to conduct victim/survivor interviews and to record their input.
5. Investigating staff shall conduct record checks that include the following:
- a. Offense Summary: a concise and factual summary of the affidavit.
    - i. In cases when the plea has been changed, investigating staff PSIs may need to contact the State's Attorney to determine whether the affidavit has been redacted at the time of the change of plea.
    - ii. Investigating staff shall not attach a copy of the affidavit or retype the affidavit in place of summarizing the offense.
  - b. Criminal History: a check of the individual's current Vermont conviction record.
    - i. For individuals who spent time outside Vermont, the Pre-sentence Investigator shall also check records from other relevant states.
    - ii. Investigating staff shall only include information about convictions in the criminal history section.
  - c. Substantiated Abuse Information: In cases involving violence or sexual abuse, investigating staff shall contact the:
    - i. DCF, Family Services Division (FSD), to determine if there are prior substantiations of abuse of minors; and
    - ii. DAIL, to determine if there are prior substantiations of abuse or exploitation of vulnerable adults. For contact with DAIL, investigating staff shall obtain information about any substantiation(s) of abuse or sexual exploitation involving the individual awaiting sentencing by requesting an Abuse Registry check from Adult Protective Services (APS) and, if necessary, a copy of the APS investigation report.
  - d. Sex Offense Registration Information: If the PSI is prepared for a case in which there was a conviction for a sex offense that requires registration, investigating staff shall obtain, and include in the report, information pertaining to the following:
    - i. the individual's juvenile record, if any; and
    - ii. any deferred sentences received for a registrable sex offense.
  - e. Defendant Interview Results:
    - i. Investigating staff shall conduct the required risk assessments for the PSI report by interviewing the individual and using the documents referenced in

this directive. Investigating staff may communicate with the individual and their defense attorney to clarify any information.

- ii. In cases in which the individual faces a sex offense sentence, the Pre-sentencing Investigator shall ask the individual about their social history, including family history, education, relationships, employment, medical and health history, and information about drug and alcohol use. The Investigator shall also ask the individual about the specifics of prior convictions.
- f. Risk Assessment Results:
- i. Investigating staff shall ensure that appropriate risk assessments are completed in conjunction with the writing of the PSI report.
  - ii. If investigating staff have not completed the required training for the appropriate risk assessment, they shall ensure that a trained DOC staff member conducts the assessments.

#### **G. Peer Review Process – Minimum Standards (Sex Offense PSI only)**

For cases involving sex offenses, Presentence Investigators shall review the PSI report with a group of their peers.

1. Investigating staff for sex offense PSIs shall schedule the peer review and inform all participating parties. Staff shall schedule the peer review in such a way that the investigating staff have an opportunity to adequately investigate and still comply with court deadlines and administrative support needs.
2. If a treatment program is recommended, investigating staff shall verify the following information prior to the peer review:
  - a. eligibility;
  - b. sentence requirements; and
  - c. program availability (waitlist).
3. Investigating staff shall present the results to fellow staff members for comment and advice on further areas of investigation, the need for additional information, and any recommendations. Peer review can also be used to anticipate issues that might be raised at the sentencing hearing.
  - a. Quorum: At a minimum, the investigating staff, a Supervisor, and two other Probation and Parole Officers shall be present at a peer review, unless this requirement is waived by the District Manager.
  - b. Presenter: investigating staff shall present the information during a peer review.
  - c. Format for Presentation: investigating staff shall present:
    - i. information about the individual's offense, conviction record, social history, risk assessment, and treatment amenability; and
    - ii. a summary and recommendation.

#### **H. PSI Report**

1. Investigating staff shall assemble the information collected during the investigation into a concise narrative, focusing on elements of the offense and aspects of the individual's background relevant to risk.
2. Investigating staff shall organize the report using the appropriate PSI report format

- provided by the Department.
3. Investigating staff shall conclude the report with program and condition options for the sentencing judge. The Investigator shall base their recommendation on the offense, background, and assessed risk of the individual facing sentencing. The recommendation shall state the DOC's requirements of the individual if they are incarcerated or placed under community supervision.
    - a. When making a recommendation that includes community supervision, investigating staff shall include in the report conditions of probation needed to manage risk, protect the survivor, and mandate any required treatment.
    - b. When making a recommendation that includes incarceration, investigating staff shall identify any specific DOC program in which the individual would be required to participate, and the minimum length of sentence that is required to be eligible for that program.
    - c. Investigating staff shall only include a recommended minimum and maximum term of incarceration or suspended sentence if that information is requested by the court.
  4. The local District Manager, or designee, shall approve all PSI reports before they are submitted to the court.

#### **I. Pre-Plea PSI Reports**

1. In some instances, the court may order a PSI prior to an adjudication of guilt. The pre-plea (or pre-adjudication) PSI can only be done when the individual facing sentencing, on advice of counsel, consents to such action, and investigating staff shall not initiate the PSI until the defendant has so consented. Upon receiving notification that the defendant has consented to a pre-adjudication PSI, investigating staff may begin their investigation.
2. Investigating staff shall use the same format, timelines, and peer review process for a pre-plea PSI as for a regular PSI.
3. When investigating staff complete the pre-plea PSI, they must not disclose its contents to anyone except as provided in V.R.Cr. P. 32(c), which states:

*A report made prior to an adjudication of guilt shall not be submitted to the court or its contents disclosed to anyone until after such adjudication, except that a judge may, with the written consent of the defendant, inspect a presentence report at any time and may, if the defendant's consent expressly so states, permit the defendant's attorney, or a defendant appearing pro se, and the attorney for the state to inspect the report.*

  - a. In other words, when the pre-adjudication PSI has been completed, investigating staff shall not submit the report to the court unless the individual facing sentencing has consented in writing to the judge inspecting the report.
  - b. Investigating staff may release the PSI report to the following people with the express consent of the individual facing sentencing and the judge:
    - i. The individual-facing-sentencing's attorney;
    - ii. The individual facing sentencing if they are appearing pro se; or

- iii. The State's Attorney.
- 4. Presentence Investigators should be aware that because a pre-plea PSI is conducted prior to a finding of guilt, the defendant may not wish to discuss the offense.
- 5. Investigating staff shall not provide a sentencing recommendation in a pre-plea PSI unless the court orders them to do so.

**J. Psychosexual Evaluation for Sex Offenders**

- 1. In accordance with 28 V.S.A. § 204a, the court must order a PSI in cases when an individual is convicted of any of the following sex offenses:
  - a. Lewd and lascivious conduct, in violation of 13 V.S.A. § 2601;
  - b. Lewd and lascivious conduct with a child, in violation of 13 V.S.A. § 2602;
  - c. Sexual assault, in violation of 13 V.S.A. § 3252;
  - d. Aggravated sexual assault, in violation of 13 V.S.A. § 3253;
  - e. Aggravated sexual assault of a child, in violation of 13 V.S.A. § 3253a;
  - f. Kidnapping with intent to commit sexual assault, in violation of 13 V.S.A. § 2405(a)(1)(D); or
  - g. An offense involving sexual exploitation of children, in violation 13 V.S.A. § 64.
- 2. When a PSI is ordered by the court as a result of any of the above sex offenses, the court may also order a psychosexual evaluation. DOC may also determine a psychosexual evaluation is required to determine whether an individual will be admitted to any treatment program.
  - a. Presentence Investigators shall forward all requests for psychosexual evaluations to the Vermont Treatment Program for Sexual Abusers (VTPSA) Program Director at the time of the Court Order.
  - b. VTPSA Program staff shall maintain a list of evaluators under contract.
  - c. VTPSA program staff shall choose the evaluator from the contracted list.
  - d. Investigating staff shall forward all necessary paperwork to VTPSA Program staff, including:
    - i. the affidavit of instant the offense;
    - ii. affidavits of all previous sexual offenses;
    - iii. the individual's record check;
    - iv. the PSI report;
    - v. parole summaries; and
    - vi. a summary of behavior under previous supervision, if any.
  - e. VTPSA Program staff shall send all relevant information to the evaluator.

**K. Training**

- 1. DOC staff supervisors shall ensure that all investigating staff are certified in the PSI process; investigating staff demonstrate certification by completing all required training and demonstrating their proficiency through the required assessments.
- 2. Prior to conducting, or approving, PSIs for sex offense cases, Presentence Investigators and Supervisors shall complete the required training on, and demonstrate proficiency in, the specifics of conducting a PSI for sex offenses.
- 3. DOC training staff shall document completed training hours and passage of required

- assessments in the State of Vermont's training tracking system.
4. Prior to authorizing an individual to conduct a PSI, the District Manager or designee shall verify that the individual has achieved their PSI certification.

**L. Reviews**

To ensure compliance with Departmental standards, Central Office staff shall conduct a periodic review of PSI reports, for:

1. consistency with this directive,
2. content,
3. clarity of presentation, and
4. appropriateness of recommendations.