

THE PSR: The Defendant's PSI & PSR Are Very Important

The defendant needs to understand the importance of the Pre-Sentence Investigation (PSI) and the Pre-Sentence Report (PSR), because both have enormous consequences for the defendant's sentencing, incarceration, and supervised release status.

Each year the federal government issues a book, Rules of Criminal Procedure. This book is handy to determine the laws and rules that are used by the Justice System and the Bureau of Prisons (B.O.P.). You will find under Rule 32 what the law reads about PSI and the PSR. The PSR falls under what is called Post-Conviction Procedures.

The procedure that is under discussion is how the government sizes the defendant up and how it decides to label and describe the defendant. **Based upon what this report describes, the judge will determine a sentence, and the B.O.P. will determine what prison the inmate goes to.** (see below: HOW ARE YOU ASSIGNED A PRISON (DESIGNATION)). Based upon this report, the conditions of supervised release will be made. These are not trivial decisions and will impact his/her life greatly for years to come.

The PSI and PSR, because they are so important, are not meant to be made unilaterally by the government, but by law are to include the defendant and his/her legal representatives in the process. Under Rule 32 (i) (3) (B-C) in the Rules of Criminal Procedure a person will find the specific laws that the government is to obey when the government makes up a PSR. **What is vital, what is essential, is that the defendant is given a right to be included in the process.**

The probation office (the persons whom monitor you when you are on supervised release) will make the report. Will they be fair? Will they be honest? Will they use rumor or hear-say? Will they leave out good things about the convicted person? **This report is vital to all aspects of the incarceration and probation and will be completed with data, personal interviews and documentation from many sources.** McDorman feels that a pro-active approach should be taken before the PSI to help curtail any of the above questions, and assist the Probation Department with an accurate and descriptive view of the defendant concerning his/her situation. It is very important to understand that this report is constructed by a human being who has emotions and feelings that could sometimes over shadow into this report. Mc Dorman & Associates feel that every possible means available by the defendant should be used to cast the best possible light on the defendant and head off any negative irregularities in advance.

Experience has shown that the defendant needs to work with someone skilled in dealing with the PSI. McDorman & Associates will ask the defendant about their family history, medical history, psychological history, educational history, and other areas of their life. The client's relationship with family and friends will be asked about. From all of this information, data sheets can be compiled so that the client can participate in the PSR interview without being quoted, misquoted, or misunderstood during the initial interview. As the probation officer (PO) asks the standard questions, the appropriate data sheet can be handed over so that there is no mistake about the correct answer. McDorman & Associates can also work with the attorney and also attend the PSR interview if needed.

Will the attorney for the convicted not protect the interests of the client? Of course they will, but this report contains critical personal data about the defendant and prior history that possibly the attorney would not know or would have had a need to know. The PSR should not be left to chance; this determines the future of the inmate's sentence, terms of incarceration, and release. Why would an attorney neglect something so important? Many attorneys pre-determine the amount of time they will spend on a case, and then the time is spent calculating the best possible sentence and try to figure out how to get the best plea agreement in light of the possible overall sentence. Before the Booker and Fan Fan cases, when judges gave large sentence enhancements attorneys felt they had their backs against the wall. The attorneys knew if they did not work hard on a good plea bargain, their client could be hit with lots of time, no matter what the conviction was. For many attorneys, the focus is on other areas rather than the PSI and PSR. Most attorneys are also limited in what they know about the B.O.P., the procedures there of and are very out of touch with the B.O.P. policy issues.

The benefit of spending energy on the PSI is that it may give a better sentence. It may make the difference of 10 years. Is a difference of 10 years important? There is no question if the convict realized the implications of the PSR; he/she would want every effort made to achieve the best results. Of course, not everyone will save himself/herself 10 years, this was merely an example, and every defendant will have his/her own case. Another potential benefit is admission to the RDAP program in prison, which is arguably the best way to remove as much as a year from a person's sentence. Including the wrong information on the PSR could potentially disqualify a person from being admitted. On the other hand, in rare cases, if a client does not want the program he/she may want the PSR to facilitate that.

The defendant will want the best possible job done on presenting his/her side during the PSI, and will want help safeguarding his/her rights when the PSR is distributed into the system. The judge should attach objections to the PSR when it is sent to the B.O.P. If the PSR does not express that the defendant is a high school graduate or has

a high school equivalent, GED, then the defendant will automatically be expected to enter a GED class upon arrival at the designated prison. If the defendant has a high school diploma or GED, then the defendant will want to plan ahead to get this documented and save him/herself later frustrations. This is only one small example of critical and absolute vital importance of the pre-sentence report.

After learning from this, the PSR is an important documentation of the present and future of a defendant. **All of the assistance will be vital to the defendant.** Let McDorman & Associates be there to help.