

<p style="text-align: center;">STATE OF VERMONT AGENCY OF HUMAN SERVICES DEPARTMENT OF CORRECTIONS</p>	<p style="text-align: center;">Legal Reports: Presentence Investigations (PSI), Intermediate Sanctions, Pre-Releases, and Pardons</p>		<p style="text-align: center;">Page 1 of 15</p>						
<p style="text-align: center;">CHAPTER: DISTRICT OFFICES - GENERAL</p>	<p style="text-align: center;">#342</p>	<p>Supersedes: #342, dated 04/11/2023</p>							
<p>Local Procedure(s) Required: No Applicability: All staff (including contractors and volunteers) Security Level: "B" – Anyone may have access to this document.</p>									
<p>Approved:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%; border: none;"><u>SIGNED</u></td> <td style="width: 33%; border: none;"><u>10/06/2023</u></td> <td style="width: 33%; border: none;"><u>10/09/2023</u></td> </tr> <tr> <td style="border: none;">Nicholas J. Deml, Commissioner</td> <td style="border: none;">Date Signed</td> <td style="border: none;">Date Effective</td> </tr> </table>				<u>SIGNED</u>	<u>10/06/2023</u>	<u>10/09/2023</u>	Nicholas J. Deml, Commissioner	Date Signed	Date Effective
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PURPOSE

This policy establishes best practices and formatting standards for legal reports including presentence investigations (PSI), intermediate sanctions, pre-releases, and pardons. It also sets standards for PSI investigators.

AUTHORITY

13 V.S.A. § 7041(h); 28 V.S.A. §§ 202, 204, 204a; 252a, 353; 33 V.S.A. §§ 5117, 5119(f)(6), 6911; V.R.Cr.P. 32(c); VT. CONST. Ch.II, § 20.

POLICY

The Vermont Department of Corrections’ (DOC) policy is to produce legal reports that provide accurate, relevant, and timely information that enable the court and Governor’s Office to make informed sentencing, supervision, and clemency decisions. The legal reports further assist the DOC in the classification process and in determining the appropriate supervision conditions, where applicable.

GENERAL PROCEDURES

A. Presentence Investigation Report

1. A Presentence Investigation (PSI) is the process by which DOC staff investigate and compile a report on a defendant's assessed risk, background, and offense, which the court reviews prior to sentencing.
2. A PSI report is a written report, prepared by DOC staff and provided to a judge, that contains a recommendation for a sentence and factual information pertaining to the defendant and/or victim. The PSI report:
 - a. Provides the sentencing judge with information about an individual facing sentencing and the underlying circumstances of their offense;
 - b. Provides the judge with relevant information on which to base sentencing decisions;
 - c. Reflects the professional judgment of, and assessment by, the DOC regarding the individual's risk management; and
 - d. In the case management process within correctional facilities and probation and parole offices.
3. The local DOC probation and parole office for the district in which the crime occurred is responsible for conducting the PSI. The local District Manager (DM) or designee shall assign an investigator to complete the PSI report.
 - 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, or change of venue, may require other probation and parole offices to complete the PSI.
4. Investigators shall obtain signed releases of information, when required, before they gather any documentation and information to complete the PSI report.
5. PSI reports, and their contents are confidential and privileged. Investigators shall not disclose a PSI report, or its contents, to anyone outside the DOC, with the following exceptions:
 - a. The court;
 - b. A treatment provider for the purposes of accessing treatment or psychosexual evaluation if the court approves the disclosure. To

- request approval from the court, the investigator shall complete the appropriate treatment/assessment release form; or
- c. Any situation in which the court gives explicit written permission.
 6. The investigator shall send the PSI report to the Department for Children and Families (DCF) in cases in which an individual is convicted of a sex offense against a child.
 7. The investigator shall maintain files, in accordance with the following procedures:
 - a. Enter the date of the investigation, the defendant's contact information, and other relevant PSI information in the Offender Management System (OMS), in accordance with the OMS technical guide; and
 - b. Review, redact, and attach the following documents in the individual's OMS record, in accordance with the OMS technical guide:
 - i. All affidavits, psychiatric/psychological reports, and treatment summaries used in the PSI; and
 - ii. The final PSI report;
 - c. Shred upon sentencing:
 - i. Any non-electronic material used to prepare the report after completing the report and entering the information into OMS including record checks; and
 - ii. All relevant information obtained from Department of Aging and Independent Living (DAIL) or DCF, including any Adult Protective Services (APS) Reports, immediately upon completion of the PSI.
 8. The investigator shall ensure that the PSI report is filed with the court, in accordance with the appropriate statutory timelines, as outlined below:
 - a. Not less than seven days, but no more than 21 days for non-sex-offense PSIs;
 - b. Within 60 days after a report is ordered for sex-offense PSIs; or
 - c. Within 90 days of an order for a psychosexual evaluation and report.
 9. The court may extend the timelines provided above. In such instances, the investigator shall adhere to the court's timeframe.
 10. If the investigator is unable to meet the court's timeframe, they may file a motion for continuance. The investigator shall submit this request to

the court as soon as they know they will be unable to meet the timeframe.

11. When conducting a standard PSI, the investigator:
 - a. Shall Interview:
 - i. The defendant. The courts have ruled that PSI interviews are a critical state of the sentencing process. If the defendant requests counsel, the investigator shall allow counsel to attend the interview; and
 - ii. Any other individuals who can verify required information;
 - b. Shall ask the defendant for a written statement (Defendant Statement Regarding Offense) that describes their version of the offense and the circumstances leading up to it. The investigator shall include this statement in the PSI report. The statement may include:
 - i. Whether the offense was premeditated;
 - ii. Any statements of remorse or acceptance of responsibility, including acknowledgement of:
 - a) Specific allegations; and
 - b) Harm to the victim or community;
 - c. May ask the victim(s), or their next of kin or guardian, for a voluntary written statement (Victim Impact Statement) about any emotional, financial, or physical consequences resulting from the offense. However, these written victim impact statements are not required in standard PSI investigations. If the victim is a minor, the investigator shall obtain parental consent before asking for a voluntary written statement.
 - i. An investigator shall obtain permission from the victim(s), or their next of kin or guardian, before including the impact statement in their PSI report.
 - ii. This voluntary written statement is separate from any impact statement made by victim(s), or their next of kin or guardian, to the court, State's Attorney, or victim's advocate within a State's Attorney's office.
 - iii. If the victim(s), or their next of kin or guardian, are not able to provide a written statement, the investigator may conduct an interview.
 - a) The investigator may request that a regional Victim Services Specialist (VSS) conduct the interview. If the victim(s), or

their next of kin or guardian, consents to an interview with a VSS, the investigator shall ask the VSS to contact the victim.

- b) The DOC's Victim Services Unit (VSU) is an important resource on matters related to victim support. Investigators are strongly encouraged to utilize a VSS when conducting interviews or requesting voluntary written statements;
 - d. Shall document information explaining the defendant's custodial responsibilities;
 - e. Shall conduct a case file review that includes the following:
 - i. A concise and factual summary of the affidavit.
 - a) The investigator shall not attach a copy of the affidavit or retype the affidavit in place of summarizing the offense.
 - b) If the plea changes, the investigator may need to contact the State's Attorney to determine whether they redacted the affidavit at the time of the change of plea.
 - ii. A check of the individual's records including:
 - a) Vermont convictions;
 - b) The Interstate Identification Index (III);
 - c) Any state in which there is an indication on the III that the defendant may have a criminal record; and
 - d) Any convictions in states where the defendant has a history of residing, working, or visiting.
 - iii. In cases involving the mistreatment of a vulnerable adult, the investigator shall consider contacting DAIL.
 - f. Shall ensure that appropriate risk assessments are completed in conjunction with the writing of the PSI report. If the investigator has not completed the required training for the appropriate risk assessment, they shall ensure that a trained DOC staff member conducts the assessments.
12. When conducting a PSI for a sex offense, the investigator shall:
- a. Complete the required risk assessments for the PSI report by interviewing the defendant and using the documents prepared for the case file review.
 - i. The investigator may communicate with the defendant and their defense attorney to clarify any information;

- ii. If the conviction requires registration on the sex offense registry, the investigator shall obtain, and include in the report, information pertaining to:
 - a) The individual's juvenile record, if any; and
 - b) Any deferred sentences received for a registrable sex offense;
 - b. Contact:
 - i. DCF, Family Services Division (FSD), to determine if there are prior substantiations of abuse of minors in cases involving sexual abuse of a child or vulnerable adult; and
 - ii. DAIL, to determine if there are prior substantiations of abuse or exploitation of vulnerable adults, in cases involving a vulnerable adult. The investigator shall request an Abuse Registry check from Adult Protective Services (APS) for information about any substantiation(s) of abuse or sexual exploitation involving the defendant, if necessary, they may also request a copy of the APS investigation report;
 - c. Document information explaining the defendant's custodial responsibilities in the PSI reports;
 - d. Ask the individual about their social history, including education, employment, family, health and medical background, information about drug and alcohol use, relationships, and sexual history. The Investigator shall also ask the defendant about the specifics of prior convictions; and
 - e. Interview the victim(s), or next of kin or guardian of the victim(s). If the victim is a minor, the investigator shall obtain parental consent before conducting the interview.
13. Investigators shall review the PSI report with a group of their peers when cases involve sex offenses. The peer review is an opportunity for staff to comment and advise on further areas of investigation, alert the investigator to issues that might be raised at the sentencing hearing and make any recommendations. The investigator shall:
 - a. Schedule a peer review with enough time to adequately investigate and comply with court deadlines and administrative tasks. At a minimum, the investigator, a supervisor, and two Probation and Parole Officers (PPOs) shall attend a peer review unless this requirement is waived by the DM;

- b. Confirm the following information if a treatment program is recommended:
 - i. Eligibility;
 - ii. Sentence requirements; and
 - iii. Program availability (waitlist);
 - c. Present information about the individual's offense, conviction record, social history, risk assessment, and treatment amenability at the peer review meeting. The investigator shall also present a summary and recommendation.
14. When preparing and submitting PSI reports, the investigator shall:
- a. Assemble the information collected during the investigation into a concise report, focusing on aspects of the individual's background relevant to risk and elements of the offense;
 - b. Ensure that the PSI report contains credible, relevant, and verified information, to the fullest extent possible. The investigator shall also include the source of verified information in the PSI report;
 - c. Format the report using the appropriate template provided by the DOC; and
 - d. Upon request from the sentencing judge, conclude the report with condition and program recommendations for them to consider. The investigator shall:
 - i. Base their recommendation on the offense, background, and the defendant's assessed risk. The recommendation shall state the DOC's requirements of the individual if they are incarcerated or placed under community supervision;
 - ii. Include conditions of probation that manage risk, protect the victim, and mandate any required treatment, if recommending community supervision;
 - iii. Identify any specifically recommended DOC program and its required length for the defendant to participate in that program, if recommending incarceration; and
 - iv. Provide a sentencing recommendation when a validated risk assessment indicates a need for programming and treatment options. The investigator shall consult with the DOC Central Office about a sentencing recommendation when the crime involves a sex offense, or results in the death of an individual.

- e. The local DM, or designee, shall approve all PSI reports before they are submitted to the court.
15. In some instances, the court may order a PSI prior to the adjudication of guilt. The pre-plea (or pre-adjudication) PSI requires the defendant's express consent, which is obtained by the court. If a defendant consents to a pre-plea PSI, the investigator:
- a. Shall use the same format, timelines, and peer review process used in a regular PSI;
 - b. Shall consider the defendant's wish to not discuss the offense because a pre-plea PSI occurs prior to an adjudication of guilt;
 - c. Shall not disclose its contents or submit the pre-plea PSI report to the court without the defendant's express written consent, in accordance with the Vermont Rules of Criminal Procedure, 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 PSI 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.
(V.R.Cr.P.32(c));
 - d. Shall not provide a sentencing recommendation in a pre-plea PSI unless they receive an order by the court.
16. When an individual is convicted of any of the sex offenses enumerated under 28 V.S.A. § 204a, the court may order psychosexual evaluation in addition to ordering the required PSI.
- a. 28 V.S.A. § 204a includes:
 - i. Lewd and lascivious conduct, in violation of 13 V.S.A. § 2601;
 - ii. Lewd and lascivious conduct with a child, in violation of 13 V.S.A. § 2602;
 - iii. Sexual assault, in violation of 13 V.S.A. § 3252;
 - iv. Aggravated sexual assault, in violation of 13 V.S.A. § 3253;
 - v. Aggravated sexual assault of a child, in violation of 13 V.S.A. § 3253a;

- vi. Kidnapping with intent to commit sexual assault, in violation of 13 V.S.A. § 2405(a)(1)(D); or
 - vii. An offense involving sexual exploitation of children, in violation of 13 V.S.A. § 64.
- b. If the court orders a psychosexual evaluation:
 - i. Investigators shall:
 - a) Forward all requests for psychosexual evaluations to the DOC Program Services Division at the time of the court order; and
 - b) Forward all necessary paperwork to Program Services staff, including:
 - 1) The affidavit for the offense(s);
 - 2) Affidavits of all previous sexual offenses;
 - 3) The PSI report; and
 - 4) All related releases of information;
 - ii. Program Services staff shall:
 - a) Maintain a list of evaluators under contract;
 - b) Choose the evaluator from the contracted list; and
 - c) Send all relevant information to the evaluator.
17. DOC Central Office staff shall conduct a periodic review of PSI reports, to ensure compliance with the following:
- a. Consistency with this policy;
 - b. All required information is included and complete;
 - c. Clarity of presentation; and
 - d. Appropriateness of recommendations.

B. Intermediate Sanction Reports

1. An Intermediate Sanction is an alternative to incarceration (e.g., pre-approved furlough (PAF), supervised community sentence (SCS)) that requires individuals to engage in programming to address their needs and risks. The court preliminarily approves a plea agreement and orders the DOC to investigate and prepare an Intermediate Sanction Report (ISR).
2. An ISR is a report written by the Probation & Parole Office to provide a recommendation to the court on whether an individual is appropriate for a PAF or SCS status. The ISR is the process by which the DOC determines

whether an intermediate sanction is an appropriate and available alternative to a traditional incarcerated sentence.

3. If a defendant's charge is related to a domestic offense for interpersonal partner violence or a sexual offense, they are not eligible for intermediate sanction sentencing statuses.
4. Upon receipt of the court's request, the local DOC probation and parole office DM, or designee, shall assign an investigator. The investigator shall:
 - a. Follow the process for initiating an investigation in the individual's OMS record;
 - b. Schedule a meeting with the individual for whom the Intermediate Sanction was created to:
 - i. Conduct the Supervision Level Assessment (SLA). The SLA is used to determine the individual's eligibility for certain intermediate sanction sentencing statuses including PAF or SCS.
 - a) If the defendant scores medium or below they are not eligible for an intermediate sanction sentencing status and the investigation shall end.
 - 1) The investigator shall prepare a detailed report explaining why the individual is not eligible and a submit a copy to the DM, or designee.
 - 2) The DM, or designee shall submit a copy of the report to the court.
 - b) If the defendant scores medium/high, or high, on the SLA, the investigator shall also administer the Community Supervision Tool of Ohio Risk Assessment System (ORAS). The ORAS is used to determine where in the DOC continuum of services individuals may fall and which risk reduction program curricula they shall complete, if eligible.
 - 1) A defendant is eligible for SCS if their SLA score is medium/high and their ORAS score is at least 19 if the defendant is male or at least 25 if the defendant is female.
 - 2) A defendant is eligible for PAF if their SLA score is high and their ORAS score is at least 19 if the defendant is male or at least 25 if the defendant is female.
 - ii. Verify the following:

- a) The sentence structure is a one year minimum and three year maximum;
 - b) The compliance requirements of the Intermediate Sanction Plan, and the program;
 - c) The individual's suitability for the program;
 - d) The individual's willingness to complete the program;
 - e) The individual's ability to access, and engage in, programs or services;
 - f) The individual's residence, if required based on the current condition's guidance.
 - g) The individual's conditions of supervision while on furlough;
- c. Meet with a Risk Reduction Program Coordinator (RRP Coordinator) to determine an individual's eligibility for programming.
 - d. Prepare a detailed report of their investigative findings and submit a copy to the DM, or designee.
 - i. If the investigator finds that the intermediate sanction is an appropriate and available alternative to a carceral sentence they shall review the conditions of community supervision with the individual to confirm that they understand, and agree to, the conditions. The investigator shall create and sign the SCS or PAF conditions in OMS, in accordance with the OMS technical guide.
 - ii. If the investigator finds that the intermediate sanction is not an appropriate and available alternative to a carceral sentence, no further action is required once the report is submitted to the court.
 - e. The DM, or designee, shall approve the final report and submit it, along with the signed conditions of community supervision, and the defendant's signed interest form to the court within 15 days.

C. Pre-Release Probation Reports

- 1. When an individual is convicted of an offense enumerated under 28 V.S.A § 204a they may be sentenced to a term of incarceration of at least a year followed by a term of probation. Prior to the incarcerated individual's release to probation, staff at the local probation and parole field office shall prepare a report for the court to review that verifies whether the incarcerated individual met their sentencing conditions.

2. When preparing and submitting the pre-release reports:
 - a. The Corrections Services Specialist (CSS) shall:
 - i. Request a programming summary from the treatment service provider;
 - ii. Ensure that the performance section of the report includes a description of an incarcerated individual's engagement in treatment services, compliance with other sentencing conditions, and any relevant information related to their release; and
 - iii. Email the performance section to the assigned Probation and Parole Officer (PPO) no later than 45 days before the incarcerated individual's release date.
 - b. The PPO shall:
 - i. Complete the offense, sentence, and recommendation sections of the pre-sentence report;
 - ii. Submit the report to the court, the State's Attorney, and Defense Counsel no later than 30 days before the incarcerated individual's release date; and
 - iii. Upload the final report into the individual's OMS record.
3. The Commissioner may recommend a modification to an incarcerated individual's pre-release probation order if they believe that the incarcerated individual violated any of their sentencing conditions. Under these circumstances, the PPO shall:
 - a. Attend the modification hearing, if one is scheduled by the court, before an individual is released on probation. The PPO may need to explain the recommendation to modify a pre-release probation order to the court;
 - b. Only the court may modify conditions to a probation order; and
 - c. PPO shall upload the following into the individual's OMS record:
 - i. The written recommendation to modify a pre-release probation order; and
 - ii. Any modification made by the court.

D. Pardons

1. A pardon is a formal and legal act of clemency exclusively authorized by the Governor, per Chapter II, section 20 of the Vermont Constitution.

- a. The Office of the Governor may make an initial determination on whether an applicant's materials are complete. If the Office of the Governor determines that an application is complete, the office may request that the DOC investigate an individual's case to determine the extent to which they meet the criteria under the pardon decision guidelines and make a recommendation to the Governor.
 - b. When the DOC administrative staff receive an individual's application from the Office of the Governor, they shall forward it to a field services operations manager.
 - c. The field services operations manager shall provide the local DOC probation and parole field office with the application materials and the DM, or designee, shall assign a PPO to investigate.
 - d. The DOC administrative staff shall record the date of the investigative assignment and the name of the assigned PPO.
2. To determine whether consideration for a pardon is appropriate, a PPO shall:
- a. Document the pardon investigation, each step of their review, and all communication within the individual record in OMS, in accordance with the OMS technical guide.
 - b. Only investigate a pardon request for the specific conviction(s) included in an individual's application;
 - c. Review the individual's materials and verify the following:
 - i. The application is notarized;
 - ii. The contact information for the applicant's employment references, and any related parties including the State's Attorney, arresting officer(s), and presiding judge at the time of their conviction is correct;
 - iii. The individual has paid all court costs, fines, and restitution; and
 - iv. The application contains:
 - a) Four letters of recommendation;
 - b) A signed Authorization to Obtain Records and Liability Release; and
 - c) A signed Oath and Agreement to Update.
 - d. Contact the applicant if the application is incomplete and explain which documents are missing, how to obtain the documents, and that the applicant is responsible for providing all required documents within 30 days.

- e. Acquire all relevant affidavits, and mittimus for the specific conviction(s) as well as any contact information for victim(s) or survivors(s), if applicable, from the courts.
- f. Complete a record check to determine whether the individual's date of conviction meets the minimum timeframe for their crime classification (e.g., felony or misdemeanor), in accordance with the pardon criteria guidelines.
 - i. If the minimum timeframe for the individual's crime classification is not met, the PPO shall end their investigation and:
 - a) Write a letter to the Office of the Governor describing why the investigation cannot proceed; and
 - b) Upload their closure letter into the individual's OMS record.
 - ii. If the applicant meets the minimum timeframe for their crime classification, the PPO shall:
 - a) Confirm that the applicant meets the minimum under the remaining decision guideline categories (social behavior, employment, and benefit to society) for their crime classification;
 - b) Determine if the applicant needs to submit supplemental information including educational background and social history; and
 - c) Contact the applicant to obtain any supplemental information, as applicable. This can be completed during an in-person meeting, phone interview, or by email correspondence.
- g. Contact the related individuals to determine whether they support the pardon.
 - i. This shall include:
 - a) The State's Attorney;
 - b) The arresting officer(s);
 - c) The presiding judge at the time of conviction. If the judge is no longer on the bench, the PPO shall document this in their final report;
 - d) The victim(s), or their next of kin or guardian; and

- e) Any references included in the application materials. Individuals shall submit at least four references, but no more than five.
- h. The PPO shall complete the entire pardon investigation within 90 days of receiving the investigative assignment unless an extension is approved by the DOC Central Office.
- i. The PPO shall prepare a final report at the conclusion of their investigation, which the DM, or designee, shall review and sign.
 - i. The PPO shall include the following in their report:
 - a) Whether the applicant responded within the required 30 days to any requests for documentation;
 - b) The applicant's references, related parties, and other information gleaned from the application's supplemental materials; and
 - c) The DOC's recommendation letter on whether a pardon is appropriate, which shall be signed by the Commissioner.
 - ii. The PPO shall upload their final report into the individual's OMS record.
- j. The DM, or designee, shall submit the final report and recommendation letter to the DOC's Staff Attorney.
- k. The DOC Staff Attorney shall review the final report and recommendation letter before submitting the letter to the Commissioner for signature.
- l. The DOC administrative staff shall:
 - i. Confirm that the investigation concluded;
 - ii. Submit the final report and signed recommendation letter to the Office of the Governor; and
 - iii. Upload the final report and signed recommendation letter into the individual's OMS record.