

Probation Department Sentencing Recommendations in Two Utah Counties

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THE USE OF A presentence investigation report (PSI) remains an integral part of the sentencing process in many jurisdictions despite the growth of mandatory sentencing laws, three strikes, and truth in sentencing legislation, as well as the increased use of sentencing guidelines. While a PSI is required for sentencing purposes in many states, it remains discretionary in others (Clear, Clear & Burrell, 1989).

Several different groups use the presentence report for a variety of purposes. Judges rely on the PSI to help determine the appropriate sentence in a given case. Frequently, a judge's only contact with a defendant occurs in the process of accepting a negotiated guilty plea and at the sentencing hearing. Prosecutors and defense attorneys also rely on the presentence report to assist in preparing for the sentencing hearing. However, other groups use the PSI for reasons unrelated to sentencing. Probation/parole officers and prison employees use the presentence report as a tool for supervising offenders. The PSI often provides information which is helpful in identifying offender programming needs as well as risk factors that focus on the likelihood of recidivism. Parole authorities rely on the PSI when dealing with release decision-making for incarcerated inmates (Abadinsky, 2000).

Despite the various uses of the presentence report by different user groups, a recent Utah study concluded that the single most important purpose of the PSI was to assist the court in reaching a fair sentencing decision (Norman & Wadman, 2000). This conclusion resulted from surveying over 200 judges, prosecutors, defense attorneys, and probation/parole officers.

The specific content areas of the presentence report vary from jurisdiction to juris-

diction. However, some uniformity of content does exist in a large number of states. Common content areas include: 1) information regarding the current offense; 2) the offender's past adult and juvenile criminal record; 3) family history and background; and 4) personal data including education, health, employment, and substance abuse history (Black, 1990). In addition, it is not uncommon for state statutes to dictate some content areas such as victim impact statements (Clear & Dammer, 2000).

Drass and Spencer (1987) reported that many jurisdictions also include in the PSI summary information about the defendant as well as a sentencing recommendation. However, Clear and Dammer (2000) point out that not all probation systems include a sentencing recommendation in the PSI. Moreover, they assert that sentencing reforms have sufficiently restricted judicial sentencing discretion so that the PSI recommendation is much less important than it once was.

Prior studies have examined the relationship between the sentencing recommendation contained in the presentence report and actual sentencing outcomes. While there is some variation from study to study, one finding is consistently clear: In the majority of cases, judges accept the recommendation contained in the presentence report. In a 1971 study, Liebermann, Schaffer and Martin concluded that, when probation was recommended, judges followed the recommendation in 83 percent of cases. When prison was recommended, judges followed the recommendation 87 percent of the time. In a more recent study, Latessa (1993) discovered that judges followed the PSI rec-

ommendation in 66 percent of cases involving a prison recommendation, and in 85 percent of the cases where probation was recommended.

The development and implementation of sentencing guidelines began in the late 1970s in the federal courts and in a number of states (Frase, 1995). Among the states, Minnesota is credited with being the first to adopt sentencing guidelines and create a state sentencing commission to implement them (Tonry, 1993). The movement to develop sentencing guidelines grew from a desire to reduce the sentencing authority of the judiciary and thereby reduce the level of sentencing disparity in the justice system. In a 1998 national survey, the National Institute of Justice reported that 19 states and the federal government have sentencing commissions while 17 states have implemented either presumptive sentencing guidelines or voluntary/advisory sentencing guidelines. Among the 17 states, the survey concluded that 10 use presumptive guidelines while seven states' guidelines are voluntary or advisory.

Sentencing in Utah

The State of Utah predominately uses an indeterminate sentencing system in conjunction with mandatory minimum sentences for a limited number of heinous offenses. Inmates do not accumulate good time credit. The state parole board determines the actual amount of time served by each inmate.

A presentence investigation report is required by statute for all felony offenses, and for selected classes of serious misdemeanor crimes. The report contains a non-binding

sentencing recommendation from the probation department. The probation officer who prepares the PSI determines the recommended sentence by applying a voluntary sentencing guideline system to individual cases. The sentencing guidelines are calculated by combining the seriousness of the current offense(s) with the defendant's past criminal record. A matrix system is then used to arrive at the appropriate sentence. The sentencing guideline system includes a list of aggravating and mitigating factors that are used by the probation staff to adjust the severity of the recommended sentence.

This study examined the attitudes of 227 Utah judges, prosecutors, public defenders, and probation/parole officers toward specific issues related to the sentencing recommendation contained in the PSI, and the use of the sentencing guideline system. In addition, the study compared the recommended sentences from 110 randomly selected presentence investigation reports with the actual sentences imposed by the courts.

The purpose of the study was to assist the Utah State Department of Corrections in improving the quality and usability of the PSI.

Study Design and Participants

A questionnaire was initially developed to ascertain the attitudes of public employees who are considered primary users of the PSI in Utah. The four user groups were: 77 district court judges; 50 public defenders; 150 adult probation/parole officers; and 101 prosecutors. A four-point Likert Scale was used for the closed-end items. Data collection ensued after experienced members of the Utah Department of Corrections and the Utah State Judiciary tested a draft of the survey instrument.

During April 1999, the survey was distributed statewide to 378 potential respondents from the four PSI user groups. Random sampling did not occur. Instead, the researchers identified the total number of individuals from each group and used the entire population in the study. Preaddressed postage-paid envelopes were included with each questionnaire for ease of return.

Of the 378 surveys distributed, 227 were returned providing a response rate of 60 percent. All of the returned questionnaires contained useable data. Among the four PSI usergroups, judges accounted for 22 percent of the total respondents, probation/parole officers 40 percent, prosecutors 34 percent, and public defenders four percent. The par-

ticipants were largely male (80 percent) and between the ages of 31 through 50 years.

In the second part of the study, 110 presentence investigation reports were randomly sampled from the probation department in two northern Utah urban counties. These counties (Weber and Davis) are located immediately north of Salt Lake City, Utah and have populations of 158,000 and 220,000 respectively. They are both considered part of the greater Salt Lake City area.

Research team members then contacted the District Court Clerk in each county and solicited the actual sentencing record for each presentence investigation report previously obtained from the probation department. The recommended sentences from the presentence reports were then compared to the actual sentences imposed by the court in order to determine 1) the degree to which judges followed the recommendation contained in the PSI and 2) how frequently the probation department deviated from their own voluntary sentencing guideline system.

Study Limitations

The findings from this study should be viewed with caution for several reasons. First, the research was conducted in just one state. Therefore, the findings should not be generalized to jurisdictions outside of Utah. Second, among the four PSI user groups, public defenders were very much under represented compared to the number of judges, prosecutors, and probation/parole officers participating in the study. This may well have had an impact on the responses to the agree/disagree statements included in the survey instrument. Finally, the 110 presentence investigation reports which were randomly sampled to compare sentencing recommendations with actual sentences imposed is a relatively small number drawn from only two counties.

Summary of Findings

The findings from this study are divided into two parts. The first asked a group of 227 respondents to reveal their attitudes towards six statements related to either the sentencing recommendation part of the PSI or the use of sentencing guidelines. These respondents consisted of four groups who use the PSI for a variety of purposes. They included 49 judges, 77 district attorneys, 85 adult probation and parole officers, and nine public defenders.

The survey instrument used to collect the data contained a four-point Likert Scale from which the participants chose the response that best reflected their view. The response choices included **Strongly Agree, Agree, Disagree, and Strongly Disagree**.

The second part of the findings compared the sentencing recommendations from 110 randomly selected presentence investigation reports with actual sentencing outcomes. The presentence reports chosen came from two urban counties immediately north of Salt Lake City, and included both felony and misdemeanor cases. In part, the study sought to determine whether the perceptions of the PSI user group members were consistent with reality when comparing sentencing recommendations with actual judicial dispositions.

Most Respondents Believed that Judges Follow the Sentencing Recommendation

The survey instrument asked the participants whether they agreed with the following statement: **Judges almost always follow the sentencing recommendation contained in the presentence investigation report.** Seventy-four percent of the PSI user group members either agreed or strongly agreed with this statement while 26 percent disagreed with it. Public defenders (89 percent) and prosecutors (77 percent) were the groups most likely to be in agreement with the statement. The group least likely to agree with the statement were the judges (69 percent). Since almost one-third of the judges disagreed with the statement, one might conclude that judges perceive a greater level of judicial autonomy in sentencing than any other PSI user group.

Little Support for the Idea of Removing the Sentencing Recommendation from the PSI

Some critics of the presentence report have argued that including a sentencing recommendation in the PSI removes sentencing authority from the judiciary, and gives it to probation officers (Gaylin, 1974). These respondents were asked about this issue in the following statement: **The PSI should not contain a sentencing recommendation from the probation department. Instead, the judge should decide the sentence.** Eighty-six percent of the respondents either disagreed or strongly disagreed with the statement. Prosecutors (95 percent) and judges (90 percent) were the PSI user groups most inclined to disagree with the statement. Public defenders (56

percent) were the only group for whom a majority agreed with the statement. While speculative, it could be argued that judicial opposition to this statement underscores the high level of dependence that judges have developed for having non-judicial actors (in this case probation officers) make the sentencing decision for them.

Significant prosecutorial opposition (95 percent) was not anticipated. Such a high level of disagreement with this statement by prosecutors might reflect either a distrust of placing the sentencing decision directly in the hands of judges, or prosecutors were perhaps concerned that their ability to sentence bargain might be adversely affected should the PSI no longer contain a sentencing recommendation.

PSI Sentencing Recommendation Usually Considered Appropriate

In an article published in 1985, Rosecrance argued that probation staff possess only a minimal influence over the sentencing process. He asserted that judges trust prosecutor sentencing recommendations more than probation officer recommendations. Further, Rosecrance maintained that while the probation department gathered a large amount of information about the offender for inclusion in the PSI, sentencing decisions were based on only two factors—the seriousness of the offense and the defendant's prior criminal history. Our survey asked the PSI user group members to express their extent of agreement with the following statement: **The sentencing recommendation contained in the PSI usually reflects the appropriate sentence considering both the seriousness of the offense and the defendant's prior criminal history.**

Of the 220 participants who responded to this statement, 80 percent agreed or strongly agreed with it. Judges (88 percent) and probation/parole officers (86 percent) agreed with it most frequently, while public defenders (67 percent) disagreed most often with the statement.

Sentencing Recommendations Perceived as Unrelated to Judicial Philosophy

Past studies have documented the tendency of judges to adopt the sentencing recommendation contained in the PSI. Speculation persists as to why the level of sentencing conformance is as high as it is. Cromwell & del Carmen (1999) suggest that experienced probation officers, over time, come to understand the sentencing philosophy or predisposition of

the judges. The sentencing recommendation is then tailored to satisfy the perceived predisposition of the judge in a given case. In this study, the participants were asked to respond to the following statement: **The sentencing recommendation is often designed to conform to what the probation officer perceives to be the sentencing philosophy or predisposition of the judge assigned to the case.** Seventy-three percent of the participants disagreed with this statement while 27 percent agreed with it. The two groups most likely to disagree with this statement were the judges (91 percent) and the prosecutors (74 percent). The group most likely to agree with this statement was the probation/parole officer respondents (37 percent). The fact that more than one-third of the probation/parole officers who participated in the study agreed with this statement surprised us, because Utah has adopted sentencing guidelines that are used in the preparation of the PSI. The officer writing the PSI arrives at a recommended sentence after calculating the guideline and then staffs the recommendation with other probation officers. The probation department has the discretionary authority to make a sentencing recommendation that is more or less severe than the guideline dictates because the guideline system is not binding. Departure from the sentencing guideline might occur as the result of aggravating or mitigating case facts or because the probation staff understands that individual judges do have expectations for sentencing recommendations in certain types of cases.

Sentencing Guidelines perceived as Helping to Reduce Sentencing Disparity

The development of sentencing guidelines has occurred throughout the U.S. during the past 20 years (Latessa & Allen, 1999). According to a recent report in the *National Institute of Justice Journal* (1998), the federal government and 17 states have adopted either presumptive sentencing guidelines or voluntary/advisory sentencing guidelines. Proponents of sentencing guidelines believe that guidelines will limit judicial discretion and promote greater uniformity in sentencing (Heaney, 1991; Abadinsky, 2000).

In this study, we asked the respondents for their views on the sentencing guideline issue using two statements. The first statement was: **The sentencing guidelines used in the preparation of the PSI helps to reduce sentencing disparity.** Seventy-seven percent of the re-

spondents either agreed or strongly agreed with the statement. Among the four PSI user groups surveyed, judges (86 percent) and prosecutors (79 percent) were the groups demonstrating the highest level of agreement with the statement. The group showing the least amount of agreement with the statement was the public defenders (62 percent).

The final agree/disagree statement asked the participants to respond to the following: **When making the sentencing recommendation, the probation officer preparing the PSI rarely deviates from the sentencing guideline.** Sixty-nine percent of the respondents agreed or strongly agreed with the statement while 31 percent disagreed with it. More judges (78 percent) agreed with the statement than any other group. Public defenders (55 percent) were least likely to agree with the statement. The high level of agreement with this statement from the judicial respondents was not surprising considering their strong sentiment that using guidelines helps to reduce sentencing disparity.

Conformity Found Between Sentencing Recommendations and Sentences Imposed

The remaining findings involved a random sample of 110 presentence investigation reports from two northern Utah counties in which the sentencing recommendation was compared with the actual sentence imposed by the court. Table 1 describes the presentence reports sampled by the type of case (felony or misdemeanor) and by the type of offense committed.

Of the 110 cases examined, sentences were available in 101 cases. In the remaining nine cases, the defendant either failed to appear for sentencing or the sentencing hearing was postponed. As Table 1 indicates, the majority of cases involved felony crimes, most of which were either drug related or property offenses. The range of offenses for which misdemeanor presentence reports were prepared was somewhat broader. Property offenses such as vehicle burglary and theft were most common, as were drug/alcohol crimes.

In terms of actual sentences imposed, 20 percent of the felony offenders received indeterminate prison sentences. Eighty percent of felony offenders were sentenced to some form of probation, often required to serve up to one year of jail as a special condition of the probation order.

Among the misdemeanor cases reviewed, 76 percent of actual sentences involved either

TABLE 1
Types of Presentence Reports

Type of Case	Type of Offense Committed
Felony: (N=60)	1. Possession/Distribution of Controlled Substance 2. Forgery 3. Theft
Misdemeanor: (N=41)	1. Vehicle Burglary 2. Assault 3. Possession/Use of Controlled Substance 4. Theft 5. Drunk Driving
TOTAL: N=101	

formal or informal (Bench) probation often with jail as a special condition. The remaining misdemeanor cases (24%) involved either a fine or a jail commitment without probation.

In determining whether the sentence imposed matched the probation department recommendation, the researchers focused on the main element of each sentence. In felony cases, the main element of the sentence was probation, commitment to prison, or a combination of probation and jail. In misdemeanor cases, it was a commitment to jail, some type of probation, or a combination of probation and jail time. We allowed for sentencing variations in such areas as the amount of fines, victim restitution, and community service orders, while still concluding that the sentencing recommendation was substantially followed.

Of the 101 cases reviewed, the court followed the sentencing recommendation contained in the PSI in 93 cases (92 percent of the total). There was very little difference based on whether the offense was a felony or misdemeanor. Among the 60 felony cases, the court followed the sentencing recommendation in 56 cases (93 percent). In the 41 misdemeanor cases, the court followed the sentencing recommendation in 37 cases (90 percent).

With respect to departure from the voluntary sentencing guideline system used in Utah, the results were remarkably similar. Of the 101 cases studied, the probation department followed the sentencing guideline in 92 cases (91 percent), and departed from the guideline in nine cases (9 percent). In each of the nine cases in which the guideline was not followed, the offense involved was a felony. There were no departures from the sentencing guideline in the misdemeanor cases studied. In the nine felony

cases in which the probation staff departed from the guideline, five resulted in a more severe sentencing recommendation than the guideline called for, while four were less severe. Aggravating and mitigating case factors were cited in each instance as the basis for departure from the sentencing guideline.

Strict adherence to the sentencing guidelines could be viewed as either positive or negative depending upon how one feels about the use of sentencing guidelines. In this study, the guideline was followed in more than nine of every 10 cases examined. If one believes that the use of sentencing guidelines promotes greater fairness and consistency in sentencing by reducing disparity, then closely following the guideline is a good thing. Conversely, one might argue that having so few cases in which the probation department deviated from the guideline creates a "cookie-cutter" approach to sentencing that is largely devoid of human involvement. A relatively simple formula decides the sentence **without** the probation officer's assessment of the case and impressions of the defendant.

While it is beyond the scope of this study to address this problem, it is important for those who are directly involved in the sentencing process to attempt to resolve this issue.

Conclusions

Almost three out of four participants (74 percent) believed that judges follow the sentencing recommendation contained in the PSI. In this study, perception closely matched reality. Of the 110 cases reviewed, judges followed the sentencing recommendation contained in the PSI 92 percent of the time. It made very little difference (93 percent in felony cases, 90 percent in misdemeanors) whether the sentenc-

ing recommendation involved a felony or misdemeanor offense. In addition, there was significant opposition (86 percent) to the notion of removing the sentencing recommendation from the PSI altogether. Only 14 percent of the respondents supported this idea.

Most of the participants appeared satisfied with the appropriateness of the sentencing recommendation made by the probation staff. Eighty percent of the respondents believed that the sentencing recommendations are appropriate considering both the seriousness of the offense committed and the defendant's past criminal history. A minority of respondents (27 percent) believed that the sentencing recommendation is often designed to conform to what the probation officer perceives to be the sentencing philosophy of the judge assigned to the case.

The respondents were asked their views on two issues related to the use of sentencing guidelines. The first statement asked whether the use of the sentencing guidelines helps to reduce sentencing disparity. Seventy-seven percent of the respondents believed that using the guidelines helps to reduce sentencing inequities. In a related statement, 69 percent of the participants believed that when making the sentencing recommendation for inclusion in the PSI, the probation officer rarely deviated from the sentencing guidelines. This perception also matched reality. In this study, the probation staff followed the sentencing recommendation derived from the voluntary sentencing guideline system used in Utah in 91 percent of the presentence reports examined. In only nine cases did the probation department recommend a sentence different from that dictated by the sentencing guidelines.

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