



NEW MEXICO CORRECTIONS DEPARTMENT

Secretary
Alisha Tafoya Lucero

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| CD-051700 PPD Pre-Sentence/Pre-Release Reports | Issued: 02/21/94 Effective: 02/21/94 | Reviewed: 11/21/23 Revised: 03/15/18 |
| Alisha Tafoya Lucero, Cabinet Secretary | | <i>Original Signed and Kept on File</i> |

AUTHORITY:

- A. NMSA Sections 31-17-1, 31-20-6, 31-21-6, 31-21-7, and 31-21-9, 1978, Comp, as amended.
- B. SCRA 5-704.

REFERENCE:

ACA Standards 4-APPFS-1B-01 thru 4-APPFS-1B-10, and 4-APPFS-2F-01, *Performance Based Standards for Adult Probation and Parole Field Services*, 4th Edition.

PURPOSE:

To provide the District and Magistrate Courts with background information on a defendant who has been adjudicated guilty and is awaiting sentencing, or any defendant who is being considered for release prior to trial by District Court, and to provide the New Mexico Corrections Department (NMCD) with demographic, social and criminal history information regarding offenders.

APPLICABILITY:

All Probation and Parole Division (PPD) staff responsible for preparing pre-sentence reports.

FORMS:

None

ATTACHMENTS:

None

DEFINITIONS:

- A. Central Office (CO): Probation and Parole Division Central Office.
- B. Pre-Release Report: A report prepared by the PPD personnel for the purpose of assisting District Court Judges in the determination of an accused defendant's qualifications for bail.
- C. Pre-Sentence Report (PSR): A report prepared by the PPD personnel for the purpose of assisting the courts in the determination of a sentence by providing the courts with background information regarding the defendant.

POLICY:

A. Pre-Sentence Reports

1. In order to assist the court in selecting the most appropriate sentencing alternative and correctional disposition for an offender, PPD staff will prepare pre-sentence reports containing timely, relevant, and accurate data at the request of the courts; subject to this primary purpose, the report is also prepared in a manner to serve the needs of any correctional institution or field agency which may receive the offender. The privileged status of the pre-sentence report and the information within it will be maintained at all times. **[4-APPFS-1B-03]**
2. The agency shall assign resources required to ensure the submission of pre-sentence investigative reports within the time frame ordered by the sentencing court. **[APPFS-1B-02]**
3. The pre-sentence investigation process is governed by written procedures. **[4-APPFS-1B-01]**
4. Victims (s) are contacted, and a victim (s) statement is obtained, if the victim (s) elects to make a statement. The statement is contained in the pre-sentence investigation and report. **[4-APPFS-1B-04]**
5. The pre-sentence investigation process is reviewed by the agency periodically in consultation with the court. **[4-APPFS-1B-08]**
6. All pre-sentence investigations and recommendations are subject to review and approval by a supervisor prior to submission to the court. **[4-APPFS-1B-07]**
7. A pre-sentence investigation shall not be conducted, or a report prepared until the defendant has been adjudicated guilty, unless the defendant, on advice of counsel, has consented to allow the investigation to proceed before adjudication. Also, since a full account of the offense is an important element in a competent report, it will be difficult for the probation officer to obtain the needed information in its cases where guilt has not been finally determined. If it does become necessary to conduct a pre-adjudication investigation, it is essential that the defendant's informed consent be given, and that premature disclosure of the report must be conscientiously avoided.
8. Staff members other than probation officers are permitted to collect information during the pre-sentence investigation.
9. When expected by the court, recommendations are developed during the pre-sentence investigation and included as part of the pre-sentence report. **[4-APPFS-1B-05]**
10. Probation officers shall consider sentencing alternatives that match offender characteristics and needs and balance those needs with the primary mission of public safety. **[4-APPFS-1B-06]**
11. The NMCD provides services and opportunities that encourage offenders to take

responsibility for their actions. Opportunities are based upon victim (s) and community input and are fashioned in a way that seeks to ameliorate the harm done. **[4-APPFS-2F-01]**

12. The use of different pre-sentence report formats to meet the specific needs of the courts and correctional agencies shall be governed by policy.
13. The pre-sentence report shall be submitted to the court for review and evaluation no later than two working days before the date set for sentencing.
14. The confidentiality of pre-sentence investigations and reports is safeguarded consistent with law and privacy policies. **[4-APPFS-1B-10]**
15. The NMCD promptly transmits pre-sentence report investigations and reports to other criminal justice agencies when the offender is transferred to them for confinement consistent with applicable law and regulations. **[4-APPFS-1B-09]**

B. Pre-Release Reports

A pre-release report will be prepared at the request of the district court in order to determine an accused defendant's qualifications for bail.

The report shall include available information about the accused's family ties, employment, financial resources, character, physical and mental condition, the length of time of residence in the community, record of convictions, record of appearance at court proceedings, record of flight to avoid prosecution, or record of failure to appear at court proceedings and any history of substance abuse.

- C. If probation is one of the sentencing alternatives, the probation officer shall identify the need for special conditions of probation, if any, and recommend that these special conditions be appended to the general conditions of probation.
- D. The field shall have written methods to be used in collecting the information essential in making recommendations for fines, restitution, and family support, and their amount(s) to the court.



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AUTHORITY:

Policy *CD-051700*

PROCEDURES:

A. Pre-Sentence Reports (PSR) of Probation and Parole Officer (PPO): [4-APPFS-1B-03] [4-APPFS-1B-01] [4-APPFS-2F-01]

1. Upon receiving a request from a district court for a PSR, the name and identifying data of the client concerned should be submitted to the appropriate district and region offices in order that staff may check to ascertain if the subject has previously been or currently is under supervision. If there is reason to believe that the subject may have had contact with another division or region office checks will also be conducted there as deemed necessary. Each region office will designate an individual staff member who will obtain closed case files from the appropriate authority. Additionally, the district office shall conduct a check with the National Crime Information Center (NCIC) to determine if the subject is wanted. The district office shall also conduct checks with local, and/or state criminal history repositories to determine if any other criminal history information is available regarding the offender. Staff other than PPO's and supervisors may assist in the gathering of information for the PSR. However, all staff who are involved in the collection of data, or preparation and handling of PSR's will ensure that the privileged status of the information in the PSR is maintained. [4-APPFS-1B-10]
2. All PSR requests should be handled promptly and resources that are required to ensure the submission of investigative reports within the time frame ordered by the courts shall be made available. In all cases, PSR's shall be completed and returned to the sentencing judge. If a district supervisor finds that circumstances exist which will prevent the meeting of the above time frames, he/she will advise the region manager who will take necessary action to ensure that the time frames are adhered to. If for any reason the above time frames are not met, the district supervisor will advise the Court and make arrangements for an alternative due date. [4-APPFS-1B-02]
3. The PSR interview should be scheduled as soon as practical. Generally, the initial interview shall be limited to the defendant and the pre-sentence investigator, unless an interpreter is required. However, a PPO trainee may also be present for training purposes. Furthermore, the defendant's attorney may be present if requested by the defendant or the defendant's

attorney. Subsequent interviews may include spouses, family members, or attorneys, when the PPO deems it necessary. However, the scheduling of any of the interviews will give primary consideration to the scheduling needs of the PPO and the defendant, and any other parties who may sit in on the interview will have to accept the final scheduling authority of the PPO. If the defendant or any other party present during the interview becomes disruptive, the interview will be terminated, and the PPO will advise his/her supervisor and the Judge who ordered the PSR.

4. PSR's shall be reviewed and approved by the supervisor of the officer submitting the report. The Director of Probation and Parole shall supervise and review, on a continuing basis, the conduct of pre-sentence investigations, the preparation of reports, and the provision of a sentencing alternative for the court. Where probation is offered as a sentencing alternative, the officer preparing the PSR shall recommend special conditions of probation, if needed, which will be added to the general conditions of probation. [4-APPFS-1B-08] [4-APPFS-1B-07]
5. PSR's are prepared for the courts. Information expected by the Courts may vary among the judicial districts based on the needs of the courts in those districts. However, there is a core of information that is relevant regardless of the district, and which will be included in the standard format of all PSR's. Examples of this information are listed in CATEGORY A below.

CATEGORY A: Name and aliases, Current physical address and mailing address, Sex, Age, DOB, Height, Weight, Ethnicity, Tattoos and/or scars, Place of Birth, Judge, Case #, District Attorney, Defense Attorney, Co-defendants, Probation Officer, Date of Offense, Date of Arrest, Where Arrested, Arresting Agency, Present Offense and Penalty, Date Convicted, Circumstances of Offense, Victim Impact Statement, Defendant's Version of Offense, Prior Criminal Record, Spouse and Dependents, Education Level, Employment History, Financial Assets and Liabilities, Substance Abuse History, Mental Health History, and Self-admitted or Verified Gang Affiliation, recommendations for fines, restitution, and family support, and their amount(s) to the court.

6. Other information may be important in specific cases or may be requested by specific judges. That information may be included in the narrative section of the PSR, or in the form of an attachment, but the standard format of the PSR will not be changed without specific approval of the Director. Examples of this kind of information are listed in CATEGORY B below.
CATEGORY B: Length of Detention, Family History, Home and Neighborhood, Education History, Religion, Military History, Health, Leisure Time Activities.
7. Finally, there is information that may be relevant for the PPD or correctional institutions even if it is not directly relevant to the offense at hand. Such information is listed in CATEGORY C below and should be included in the evaluation.

CATEGORY C: Status as Informant, Specific Medical Problems, Post-Incarceration

Employment Offers, Family Members in Custody of Corrections Department.

8. There are three types of PSR formats, which should be used by each district office as follows:
 - a. **STANDARD PSR** - To be used in all felony cases in which no PSR has been prepared within the last 18 months.
 - b. **UPDATED PSR** - May be used in cases in which a PSR has been prepared previously, or in cases in which the offender has been under NMCD supervision during the time since the preparation of the most recent PSR. This format may be in a narrative form but must address all of the areas listed as CATEGORY A information. The emphasis in this format should be on what has changed since the last PSR, and a copy of that PSR must be attached.
 - c. **Short form PSR:** May be used in cases where in the court is requesting specific information for sentencing such as criminal history or restitution only.

9. In conducting the investigation and preparing the report the PPO should use the following guidelines.
 - a. **CRIMINAL RECORD** - The criminal record should reflect a concerted effort by the PPO to locate dispositions for all arrests and must include dispositions for all felony arrests. Discrepancies between various sources of criminal history data should be resolved whenever possible, and if resolution is not possible the discrepancy should be brought to the attention of the Court. The PPO should carefully analyze all data to create a single chronological history. If an offender has multiple arrests during the adjudication process of a single offense, then each entry should reflect its relationship to the single offense.

 - b. **CIRCUMSTANCES OF OFFENSE** - This section should be a synopsis of the investigative reports related to the current offense plus any additional information that may have been revealed during the course of a trial or guilty plea proceedings or discovered by the PSR writer during the course of the investigation.

While offense reports may be attached to the PSR for clarity, as an individual case dictates, there should still be a synopsis in this section. The synopsis should make clear the "who", "what", and "when" of the offense, and should be free of editorializing or conjecture on the part of the PPO writing the report. It should make clear the actions of the offender during the crime, the actions of any co-defendants, and should clearly illustrate the elements of the offense of which the offender was convicted. Any discrepancies uncovered in later statements by the defendant or victim(s) should generally be discussed in the evaluation and not in this section.

 - c. **VICTIM IMPACT** - This section should address physical, psychological, emotional, and/or financial harm suffered by the victim. A sincere attempt will be made to interview the victim by telephone or in person, and if this is not possible a letter will be mailed to the last known address of the victim requesting information. The parent(s) with custody

of minor victims will be contacted unless they are the defendant or co-defendant in the present offense. In those cases, the guardian or supervising social worker will be contacted. A victim will be allowed to provide any verbal or written statement that they wish, but any information they provide is purely voluntary on their part. [4-APPFS-1B-04]

- d. **LEGAL STATUS** - This section should address the court history of the offenses for which the PSR is being prepared. There should be a listing of the specific charges of which the defendant has been adjudicated guilty, the type of plea entered if applicable, any charges dismissed as a result of plea agreements or verdicts, and any special sentencing agreements and/or supervision conditions included in any plea agreements.
- e. **SUBSTANCE ABUSE HISTORY** - This section will address any history of addiction or substance abuse on the part of the offender. This may include any history volunteered by the offender but should also include information gathered from other sources. The effects of controlled substance or alcohol use in the present offense should be addressed, as well as any prior, current, or proposed treatment. With approval of the local judge, a urinalysis will be taken from the offender.
- f. **MENTAL/EMOTIONAL/PHYSICAL HEALTH** - This section should address any history of mental illness or emotional instability, and the offender's current status. The offender's own assessment of his condition should be cited but should be differentiated from any professional diagnosis. The role of the offender's mental health in the current offense should be addressed, as well as any prior, current, or proposed treatment. Any history of suicide attempts or preoccupation with suicide should be documented. Any major injuries, chronic diseases, surgical interventions, and/or head injuries should be listed and discussed as necessary while maintaining compliance with NMCD Policy *CD-176000*.
- g. **EDUCATION/EMPLOYMENT** - There should be a citing of the offender's education history and any Diploma(s)/Degree(s)/Certification(s) earned. Any history of Special Education and educational/vocational needs should be cited. This section should address the nature of the offender's present employment, income, and vocational skills. It should also explore his prior employment history for the past five years and should attempt to verify as much of that history as possible.
- h. **SOCIAL FAMILY** - This should address the current marital and family status and should address any established support obligations. This section should include an accounting of the offender's formative years, and observation of any dysfunction or strengths within the family structure. The nature of familial relationships as they relate to the current offense should be addressed.
- i. **CONDUCT UNDER SUPERVISION** - This section should document any prior or current periods of supervision by either the NMCD PPD, or any other community

supervision agencies. If the supervising officer is available their specific input should be sought, and if not, every attempt should be made to gain documentation related to supervision adjustment, and the nature of any discharges or revocations.

- j. **SUMMARY/EVALUATION** - This section should be an attempt to bring together all of the data revealed during the investigation, and to summarize it in an analysis of its relationship to understanding the nature of the offender and the present offense. The PPO should evaluate the defendant by outlining factors in the defendant's background which seem to explain his/her involvement in criminal activity, and what reasonably can be done about it; first, considering public safety and secondly, the defendant's potential for rehabilitation. The PPO should consider innovative sentencing alternatives in all cases in which incarceration is not clearly imperative for reasons of immediate public safety. The following guideline reference points should be addressed in this analysis: **[4-APPFS-1B- 06]**
- 1) The extent or degree of threat to the public posed by the individual. Significant indicators will be provided by the nature of the present offense, and the extent and substance of any prior criminal record.
 - 2) The extent or degree of an individual's commitment to criminal or delinquent tendencies and the nature of his/her response to any earlier correctional programs.
 - 3) The kind of personal stability and responsibility evidenced in his/her employment record, residential patterns, and family support history.
 - 4) The kind of apparent personal deficiencies, including education and vocational training needs.
 - 5) The personal and psychological characteristics of the offender that determine how he/she perceives the world and his/her relationship to it.
 - 6) The impact of the offense on victims and/or community. Specify any financial loss and/or physical and/or mental harm suffered.
- a. **RECOMMENDATION** - This section should terminate the PSR and should be on a separate page if so desired by the court. All recommendations shall be consistent with statutory authority. When probation is not prohibited by statute, a potential supervision plan is developed during the pre-sentence investigation and included as part of the PSR. When statutes permit, confinement, full or part-time, is part of a probated sentence only in selected cases when circumstances clearly indicate the need for confinement as part of prescribed program plan. **4-APPFS-1B-05]**

If incarceration is recommended, an alternative recommendation shall be made if applicable.

If probation is recommended, a sample of how the section might be read is as follows:

"It is respectfully recommended that the sentence be suspended (deferred) and the defendant be placed on probation for xx months (years) under conditions which include the following:"

Thereafter should be listed the conditions the officer feels important to implementing the treatment plan outlined under the "Summary and Evaluation" Section. Additionally, this section shall include the officer's recommendation concerning the amount of probation costs, restitution, along with the restitution plan approval, and applicable fees to be assessed. The recommendation shall be based on and justified by an analysis of:

- 1) The defendant's current income;
- 2) Employment status and potential for employment if unemployed;
- 3) The defendant's current debts and liabilities; and
- 4) Number of dependents.
- 5) Physical and mental health and any disabilities
- 6) Statutory guidelines as cited in NMSA Section 31-17-1, 1978, Comp., as amended.

If a diagnostic commitment is recommended, the section should read:

"It is respectfully recommended that the defendant be committed to the New Mexico Corrections Department for a diagnostic evaluation."

If a prison commitment is recommended, a sample of how the section can be written is as follows:

"It is, therefore, respectfully recommended that the defendant be sentenced to imprisonment in the custody of the New Mexico Corrections Department for a period (cite specified period)."

10. Prompt transmittal by the probation agency of PSR data to institutional personnel shall be provided when confinement of the adjudicated offender is ordered. **[4-APPFS-1B-09]**

B. Pre - Release Reports:

Upon the order of any district court the PPO will prepare a pre-release report, which the court shall use to determine the accused's qualification for bail. The report shall include available information about the accused family ties, employment, financial resources, character, physical and mental condition, the length of time resident in the community, record of

convictions, and record of appearance at court proceedings, record of flight to avoid prosecution record of failure to appear at court proceedings and any history of substance abuse.

1. The report will be prepared in the form specified by the district court requesting the report.