

PRESENTENCE INVESTIGATIONS

.01 AUTHORITY

Wisconsin Statutes [972.15](#), [973](#), [980](#), [301.48](#)

Wisconsin DOC [Chapter 328](#), [Chapter 302](#)

.02 PURPOSE

The purpose of any investigation is to furnish meaningful information and analysis for use in the correctional process.

The investigation is a careful study of how the individual's personal characteristics, criminogenic needs, risk factors, environmental factors, and behavioral patterns have interacted to produce the present situation.

.03 PRESENTENCE INVESTIGATION

After a conviction for a felony, a Court may order the Department to prepare a Presentence Investigation. Investigation due dates are usually set by the court. A Court may order a Presentence Investigation when there has been no felony conviction, but the Court may not order the Department to conduct the investigation.

Wisconsin Statute and Code provide that the Court will disclose the contents of the report to the defense attorney and to the district attorney prior to sentencing. The district attorney and defense attorney are entitled to have and keep a copy of the presentence investigation. If the defendant is not represented by counsel, the contents will be disclosed to the defendant by the Court. Although the defendant may view the report, he/she is not entitled to keep a copy of the report. All of these persons must keep the report and its contents confidential.

Although confidentiality of the Presentence report is governed by statute, the agent cannot guarantee confidentiality to any source of information. The agent should tell potential informants how their information will be used. The potential informant's concerns about confidentiality should be discussed before information is obtained, and the informant should be informed of agent's limitations in controlling the confidentiality of sources, as well as the

information itself. The agent may ask the Court to protect the identity of certain sources of information. Procedural details for protecting identity should be negotiated with the Court. After the investigation is delivered to the Court, it is the responsibility of the Court to control access to the report in accordance with the statute and its own wishes. The agent must comply with confidentiality laws when securing and disclosing medical, psychiatric, psychological, and educational information. HIV/AIDS information may be communicated in a PSI if there is specific relevancy, but may not be included in any other social investigation.

04. GENERAL INFORMATION

The following provisions apply to all Presentence Investigations prepared on any offender, including those crimes committed both before and after December 31, 1999:

1. All Presentence Investigations must be reviewed prior to being sent to the Court. Review may be done by the supervisor or through a case staffing involving other division staff, including the supervisor. Both the investigating agent's and reviewing supervisor's signatures will appear on the last page of the investigation report;
2. Pertinent investigation worksheets ([DOC-179](#), [DOC-180](#), etc), should be completed prior to the interview. **The COMPAS-R Core assessment must be completed on all offenders for pre-sentence investigations. However, if a COMPAS-R Core was completed within the last-three years, it can be copied forward and the agent will need to review and update for any changes since the last assessment was completed.** The COMPAS Core assessment must be completed and entered prior to creating the pre-sentence investigation in COMPAS.
3. The agent completes any necessary Alternative Screenings. Currently, the only alternative screening applicable for use during the pre-sentence investigation process is the Static-99R. Please see the section entitled Division of Community Corrections (DCC) - Intake/Assessment/Alternative Screening Tools for a description and explanation of its use.
4. The agent is required to review the offender's criminal history record. If the agent identifies a sex offense conviction on the offender's criminal record, in Wisconsin or any other state, the agent will call the Sex Offender Registration Program within the state of conviction. If the offender is required to register in another state other than Wisconsin, the agent will provide information as to the whereabouts of the offender to the other state's registry. The agent should note, in the Sexual Behavior section of the Presentence Investigation document, that the offender is required to register as a sex offender and the originating state;

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5. The agent is required to consider and cite any aggravating or mitigating circumstances that have affected the recommended sentence. (For TIS sentences, refer to the TIS training booklet);
6. It is required that the goals of sentencing (protection of the public, gravity of the offense, rehabilitative needs of the defendant, and any applicable mitigating or aggravating factors) be considered and addressed as part of the recommendation;
7. Unless excused by the Court, the agent of record who prepared the Presentence Investigation must appear at the time of sentencing. The cover agent or a liaison agent may appear for the agent of record if there has been a comprehensive review of the Presentence Investigation and the liaison is confident that he/she can properly represent the agent of record and the recommendations made.
8. If the defendant does not appear for his/her PSI interview or generally elects not to participate in the PSI development process, the PSI writer shall use discretion and staff the situation with his/her supervisor. In this scenario there are several typical procedures that may be appropriate based on the context of the situation and the preference of the local court:
 1. Complete as much of the PSI as possible using any collateral or other information available. In this scenario, clearly indicate the defendant chose not to participate in the Defendant's version section of the PSI. A recommendation shall still be submitted unless the PSI Writer/Supervisor does not feel there is enough information to make one.
 2. Rather than proceeding with the PSI, notify the court of the defendant's lack of participation and request further direction.

Workload credit shall be determined based on the decision chosen.

9. Supervisory staff should review with agents, the protocol to be followed by agents when making appearances and ensure that perception of neutrality is maintained. This would include the directive that agents not sit next to the District Attorney during the sentencing process.
10. Presentence Investigations shall be completed in the county of conviction, unless the offender is already on supervision in another county. In these cases, the Presentence Investigation shall be completed by the agent of record. The county of conviction shall supply the agent with relevant Court data, arrest reports, or other information requested. By mutual agreement between the units, PSIs may be completed by the county where the offender resides rather than the county of conviction or reassigned based on workload.
11. The agent in the county of conviction, who has responsibility for the Presentence, may request assistance from an agent in another county to gather information.

12. When reviewing the District Attorney file information, any written notes may not be reflected in the pre-sentence investigation.

13. If significant inaccuracies are revealed after the investigation has been distributed, the preparer shall be responsible for ensuring that all copies are corrected.

Truth in Sentencing:

Truth in Sentencing encompasses both TIS I and TIS II. TIS I applies to all felons sentenced for crimes that occurred on or after December 31, 1999, and before February 1, 2003. TIS II applies to all felons sentenced for crimes that occurred on or after February 1, 2003. The provisions of this law impact directly on the scope and nature of Presentence recommendations made to the Court by the Department. Truth in Sentencing:

1. Abolishes parole;
2. Eliminates Intensive Sanctions as a sentencing option;
3. For prison sentences, requires a Judge to impose a bifurcated sentence with an initial term of confinement in prison of not less than 1 year, followed by a term of extended supervision in the community;
4. Mandates that the extended supervision portion of the bifurcated sentence be at least 25% of the length of the confinement term imposed by the Judge for classified felonies. For unclassified felonies (TIS I) and enhanced misdemeanors (TIS II), the term of confinement may not exceed 75% of the total length of the bifurcated sentence;
5. Authorizes the Judge to impose conditions on the extended supervision term;
6. Does not change current practice for probation sentences.

.05 PRESENTENCE INVESTIGATION OUTLINE

The Investigation Worksheet ([DOC-180](#)) is a guide for the preparation of a Pre-Sentence investigation. All topical areas contained in the outline should be discussed with the defendant. Other areas, as applicable should be discussed with collateral resources. The Sexual Behavior and Military sections are to be completed only if relevant to the case. If a particular topic heading is not relevant to the case, the topic heading must still be included but noted that it is not applicable.

COVER PAGE: The first page of the pre-sentence investigation will be a cover page that is generated from information entered into COMPAS. This page contains specific demographic

information, offense and court data, and other considerations which can be utilized for sentencing.

For TIS I and TIS II pre-sentence investigations, information related to eligibility by statute for the Challenge Incarceration Program or the Wisconsin Substance Abuse Program (formerly known as ERP) will be captured in the initial data entered on the cover page of the investigation. A defendant is not eligible if the current conviction is for the following statutes: [940](#) or [948.02](#), [948.025](#), [948.03](#), [948.05](#), [948.055](#), [948.06](#), [948.07](#), [948.075](#), [948.08](#), and [948.095](#). The Division of Adult Institutions will make the final determination as to suitability of the defendant to enter either program.

The following will begin on [Page Two](#):

SECTION	TOPICS
PRESENT OFFENSE	Description of Offense Defendant's Version Victim's Statement Other Statement
PRIOR RECORD	Adult Record Juvenile Record Pending Charges Correctional Experience Other Relevant Offenses Defendant's Explanation of Record
FAMILY BACKGROUND	Identifying Information Family Attitudes, Stability and Values
PERSONAL HISTORY	Vocation/Education/Employment Mental Ability Financial Companions Emotional and Physical Health Sexual Behavior

	Attitudes and Beliefs Substance Usage History Military Leisure Time Activities Residential History Defendant's Strengths
SUMMARY AND CONCLUSIONS	Agent Impressions Restitution Agent Recommendation Recommended Conditions of Probation or Extended Supervision Anticipated Supervision Plan
SOURCES OF INFORMATION	Include all sources that provided information used in creation of the document.

.06 PRESENTENCE INVESTIGATION FORMAT

It is advised to build the pre-sentence investigation in COMPAS by following the data element tabs within the COMPAS PSI Builder. The first tab (Person Summary) will be auto-populated when the offender is created in COMPAS. Starting with the second tab, (Person Summary Custom Fields), the user should enter all custom fields sections sequentially as prompted by COMPAS. Once completed, return to the general PSI Builder section and proceed by entering the required information in the remaining fields (Statement of Offense, Defendant's Statement, Victim's Statement, etc.).

In various sections of the PSI, Criminogenic Needs scale information will automatically be displayed. The agent will then have the opportunity to provide a narrative including any additional pertinent information. When completing the narrative sections in the PSI, the information populated from the COMPAS-R Core assessment is to be considered by the agent. The agent narrative should not be a repetition of the Criminogenic Needs scale information.

PRESENT OFFENSE

Description of Offense: This is a descriptive, nonlegal and factual narrative of what happened (who, what, where, when). It should include extent of damage, injury to the victim, use of threats, and the extent to which the offender profited from the crime. "Read-ins" and any misdemeanor convictions that were part of the PSI order should be included. The description should a brief summary of the critical elements of the offense(s) from police report or Court documents. Simply re-stating from these documents verbatim, or referring to the Criminal Complaint and attaching it to the investigation is not acceptable. Reduction in charges due to plea-bargaining should be included.

Defendant's Version: This section contains a summary of a current interview with the defendant, which includes the defendant's account of the offense. Word for word repetition of written statements is not appropriate in the body of the report. The agent should include information such as explanatory statements concerning drugs, alcohol, companions, economic necessity, emotional factors, remorse, and attitudes toward victim and toward the offense. It is appropriate to include limited pertinent quotes.

Note: Compelled statements given by an offender in regard to a violation while on supervision which lead to a subsequently ordered pre-sentence investigation may not be used. However, the writer may question the offender about the violation during the PSI process.

Victim's Statement: This section contains a summary of the victim's thoughts, feelings, and residual effects of the impact of the crime. Word for word repetition of written statements is not appropriate in the body of the report. Limited pertinent quotes are acceptable. Other relevant information will include the victim's description of the offender's behavior at the time of the offense, any use of threats, and nature of relationship to the defendant. Significant effects of the crime on the victim such as physical injury, psychological problems, or losses incurred should also be addressed. Attempts to conduct personal interviews with victims are required in assaultive offenses when the victim is available and willing. This is also required when the crime has resulted in a change in the

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lifestyle of the victim and of their family. All victims, including victims of read-in offenses, shall be given an opportunity to provide a victim statement. It is important to document contact attempts and if the victim chooses not to participate.

When interviewing any victim, agents should exercise professional judgment. In cases where the victim is a juvenile, an agent shall obtain parental or legal guardian consent prior to interviewing a juvenile victim. In situations when it is not appropriate to interview the victim, input from the parent or legal guardian, the use of a video-taped interview, or input from the Victim-Witness Coordinator or other advocate would also be acceptable. Identification of juvenile victims should follow the identification method used in the Criminal Complaint. The particular circumstances of the case should dictate an agent's approach to the interview.

Adult victims should be identified as indicated in the Criminal Complaint. It is also appropriate and helpful to identify the age of the victim so the judge does not have to calculate while reading the report. If you list the minor's age, then you can omit the DOB because it will already be in other documents such as the criminal complaint and information. Age of victims should always be identified if it is a factor relevant to the charge involved whether it be child sexual assault and or battery to an individual over the age of 62 years.

[2013 Wisconsin Act 338](#) and [2013 Wisconsin Act 362](#) contain provisions that authorize victims to view portions of presentence investigation reports generated under [WI. Stat. § 972.15](#). [Act 338](#) creates a right of a victim to view portions of a PSI. DCC is not authorized to provide victim access to the PSI. It has been determined that this responsibility is apportioned to the district attorney, or a person designated by the district attorney under [WI. Stat. § 950.02\(2m\)](#), in the same way as the other victim rights in [Chapter 950](#).

Other Statement(s): This section should include any relevant input or statements from other individuals such as collaterals, co-defendants, character references, etc. If no other relevant statements are obtained, document "Not Applicable" in this section.

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Prior to attempting to obtain a statement from a co-defendant who has a pending case, the agent must legally get prior permission from that individual's attorney. Other information obtained from existing Department of Corrections records or other collateral sources may be cited and used.

The report should identify any and all documents submitted to the court with the PSI report. If letters are submitted to the PSI writer, they should be summarized within the contents of the report. They should also be submitted with the PSI in order to be included in the official, sealed PSI file with the Court.

PRIOR RECORD

Adult Record: This section will include the following information related to the defendant's prior record: Date of Offense, Date of Conviction, Date of Sentencing, Location (County, State), Offense (to include Dismissed, but Read-In), and Disposition. These elements will be captured through data entry in custom fields within COMPAS, which will then automatically be converted into a chronological table listing prior record by date of offense. Each case is to be entered separately. If there are multiple counts within one case, in the Date of Offense data field, enter the earliest offense date. In the Offense data field, enter the Case number and then each count, the specific offense, and the date of offense. In the Disposition data field, enter each count on a separate line with its respective disposition.

All criminal convictions, including read-ins, and dispositions must be listed. If there are certain data elements that are not available, note "Not Available" in the relevant data field.

The following items should not be included in this section:

- Present Offense
- Pending Charges
- Traffic, unless criminal
- Disposition unknown (unless confirmed by defendant)
- Charges/offenses for which defendant was found to be not guilty
- Dismissed cases
- Held open cases (i.e.. Deferred Prosecution, Stricken on Leave, etc.)

Juvenile Record: The Court may only consider adjudications prior to 1968 where the juvenile defendant was represented by counsel ([Gault, 1968](#)). For all reported adjudications prior to 1968, an attempt should be made to verify counsel represented the defendant. If unable to verify, do not include in this section. Instead, list in the Other Relevant Offenses section and indicate that you were unable to verify counsel representation.

This section will include the following information related to the defendant's prior record: Date of Offense, Date of Adjudication, Date of Disposition, Location (County, State), Offense (to include Dismissed, but Read-In), and Disposition. These elements will be captured through data entry in custom fields within COMPAS, which will then automatically be converted into a chronological table listing prior record by date of offense. Each case is to be entered separately. If there are multiple counts within one case, in the Date of Offense data field, enter the earliest offense date. In the Offense data field, enter the Case number and then each count, the specific offense, and the date of offense. In the Disposition data field, enter each count on a separate line with its respective disposition.

All adjudications, including read-ins, and dispositions must be listed. If there are certain data elements that are not available, note "Not Available" in the relevant data field.

The following items should not be included in this section:

- Present Offense
- Pending Charges
- Traffic, unless criminal
- "Information Only" (as listed on Portal 100/CIB)
- Informal supervision
- Counseled and Closed
- Disposition unknown (unless confirmed by defendant)
- Charges/offenses for which defendant was found to be not guilty
- Dismissed cases
- Held open cases (i.e.. Deferred Prosecution, Stricken on Leave, etc.)
- Issues such as Truancy, Smoking and Curfew
- Consent Decrees

- Deportations and Administrative actions through Immigration and Custom Enforcement (ICE)

Other Relevant Offenses: This section will include other offense information only if the Pre-Sentence Investigation writer has determined it to be relevant. The following information is appropriate to be included in this section:

- Municipal ordinance violations
- Non-criminal traffic records
- Not Guilty by Reason of Insanity cases (NGI)
- Chapter 980 commitments
- Military crimes
- Stricken on Leave
- Deferred Prosecution
- Cases that were counseled and closed
- Held open
- Expunged Cases

Correctional Experience: This section should include a summary of the defendant's positive and/or negative adjustment to: prior incarcerations, community supervision, and diversion programs. Dates, places and significant events should be noted. Information related to the following should be noted: absconding, discharges, prior revocations, alternatives to probation, periods of formal and informal juvenile supervision, juvenile placements, etc.

Pending Charges: This section is to include pending criminal matters, i.e., warrants, current revocations, detainers, etc. This should include basic information discovered as part of the investigation and should only include unsolicited information. A simple statement of what charges are pending, current status of charges, location of charges and identification of attorney would be sufficient. The defendant has a 6th Amendment right to counsel for charges that are pending, so should not be questioned about pending charges by the PSI writer. If unsolicited, the defendant voluntarily wishes to speak about pending charges, the attorney is to be contacted first to seek permission and or his/her presence during this portion of questions. Note this specifically in this section.

Defendant's Explanation of Record: The defendant shall be given an opportunity to account for their criminal record (i.e., explain circumstances and rationale, clarify discrepancies identified within the prior record, and explain motivations and problems related to the criminal history, etc.). This section could also include information presented by the offender that is not mentioned by any other sources,

FAMILY

Identifying Information: This section will include the following information related to the defendant's family: Mother, Father, Spouse/Significant Other, Dependents, Siblings, Other (Name, Street Address, City, State and Zip Code of current residence). These elements will be captured through data entry in custom fields within COMPAS, which will then automatically be converted into tables for each.

In the narrative sections for each family member (Mother, Father, Spouse/Significant Other, etc.), the agent shall enter any additional, significant demographic information. This narrative portion, for each family member field, is captured through entry in COMPAS in the PSI Builder section. This includes, but is not limited to:

- information related to the defendant's family of origin,
- adoptive and/or foster family
- current family members (dependents, adult children, spouse/significant other, etc.)
- dates of birth
- occupations
- marital status
- divorces
- remarriages
- Significant event dates, if available
- DOC # of family member if on supervision

Family Stability, Attitudes & Values: This narrative section should contain relevant family history and dynamics that contributed in a significant manner to the defendant's

personality and criminal behavior. Key elements are the family's achievements or under-achievements, areas of conflict or destructive patterns, i.e., alcohol abuse, drug abuse, violence, cohesiveness, alienation, criminal patterns, involvement with social agencies, methods of discipline, economic problems, history of employment, mental or physical health problems, and emotional stability. If is appropriate to conduct a verification of criminal record for mother, father, significant other, and siblings utilizing resources such as CCAP or DOC Locator. However, official searches utilizing Portal 100 or the Crime Information Bureau should not be utilized unless relevant and necessary. It is important that you are not disclosing information that is law enforcement sensitive and only authorized information is to be included in report.

This section should include how the defendant was viewed by family members before the offense and after, how they explain the defendant's involvement in crime, family opinions as to when the trouble began, contributing factors, whether or not the family accepts any responsibility for the course of the defendant's life, and the family's ideas on what is necessary for the defendant to avoid further criminal involvement. The agent will also report the defendant's feelings and attitudes about his/her family. Discuss the stability of the marriage/current relationship, the nature of interpersonal relationships, the spouse's/significant other's attitude toward the defendant, relationship dynamics, the offense, and the effect of the offense on the marriage/relationship. Include a presentation of the facts indicative of how the defendant performs the role of a parent; i.e., time spent in activities with children or evidence of child abuse.

PERSONAL HISTORY

Vocation/Education/Employment: Information related to Education History and Employment History will be captured through entry in COMPAS. Information for these fields may have been auto-populated from prior entries in the Education and Employment History modules. If information is not current or complete, additional information may be entered.

This narrative section should contain the defendant's level of educational/training history, along with behavior patterns while at school. Key elements are attendance records, response to authority, achievement, ability, special education, test scores, multi-disciplinary

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team results, participation in school activities, attitude toward school, and reason for suspension/expulsion.

Summarize prior vocational programming, training, completion of certificate programs, post-secondary degrees obtained, and plans for future education/training.

Summarize prior employment, amount of time employed, length at current job, job classification (skilled, unskilled, clerical, etc.). Key elements are reasons for leaving, how long employed and why, barriers to employment (cultural, physical, etc.), relationships with co-workers and supervisors, and attendance record.

Mental Ability: This narrative section should contain a summary of the individual's ability to function independently in society. Discuss observations and information regarding ability to comprehend verbal/written communications, developmental disabilities, and involvement in sheltered workshops or use of SSI benefits.

Financial: This narrative section should contain a summary of the level of income, public assistance, debts, assets, expenses, ability to manage finances, and significant problems such as bankruptcy or garnishments.

Companions: This narrative section should contain a summary of positive and negative influences of significant persons in the defendant's life, with focus on the nature of the peer group, Security Threat Group (STG)/gang affiliations, their common interests, values, and activities. Attention should be given to the degree of affiliation or time spent with pro-social peers and/or anti-social acquaintances.

Emotional and Physical Health: This narrative section should contain a summary of past and current mental health or physical health issues that limit the defendant's ability to function in society. Summarize current and past psychological evaluations, diagnoses and treatment history including medications and whether or not the defendant or others believe treatment is needed. Discuss early developmental history if relevant. Report all significant health problems and/or disabilities. Include any crisis/trauma events or sexual victimization. Consider current medications, somatic complaints, and personal care concerns

(i.e.. hygiene, nutrition, general appearance, etc.). If relevant to the case, information concerning HIV/AIDS may be communicated in a Pre-Sentence Investigation. See limitations of 968.38 and provisions of 968.38. Further considerations are where the test result itself is critical to the underlying crime.

Sexual Behavior: This narrative section should be completed only if relevant to the case or criminal history. If there is no relevance, enter "Not Applicable." This section will contain a summary of sexual attitudes and preferences. Discuss sexual aberrations, assaultive sexual behavior, sexual victimization or sexual development problems. If a Static-99R has been completed on a sex offender, summarize the risk results.

Attitudes and Beliefs: This narrative section should discuss a summary of the defendant's behavior that would provide evidence for the existence of antisocial thoughts and feelings. Considerations should include the defendant's patterns of problem solving, thinking errors (cognitive distortions), coping skills, rationalization/justification for his/her behavior and how they view the world around them in general. COMPAS Criminogenic need scales of Personality Traits, Thinking and Attitudes, Anger, and Cognitive Behavior will provide insight into the defendant's attitudes and beliefs. Remember to keep comments factual, based on the defendant's demonstrated behavior or comments. Include report of inconsistent response pattern or potential faking concern as identified in the assessment.

Place special emphasis on the offender's beliefs regarding:

- The criminal justice system
- His/her offense and culpability/responsibility for it
- Common social conventions such as school and work
- Victim-stance
- Respect for him/herself or others
- Attitude toward his/her victim

Substance Usage History: Information related to Substance Usage History will be captured through entry in COMPAS. Information for these fields may have been auto-populated from prior entries in the Substance Usage History module. If information is not current or complete, additional information may be entered. Please refer to COMPAS Business Process for further clarification regarding completion of these modules.

This narrative section should discuss the influence that alcohol and other drug usage has had on the defendant's life, including the extent to which their personality and behavior has been affected. Consider the extent of the problem, duration, involvement in treatment programs, and the defendant's statement regarding the problem.

Military: This narrative section should be completed only if relevant to the offender, the present case, or criminal history. If not relevant, enter "Not Applicable." Summarize military experience to include date(s) of entry, type and date of discharge, attitude toward service, highest rank achieved, combat experience, disciplinary action, duties and training, AWOLs, service related disabilities, hospitalizations, and eligibility for Veteran's Benefits.

Leisure Time Activities: This narrative section should consider how the defendant spends non-working/non-sleeping hours, i.e., interest in hobbies, sports, creative work, organizations, TV watching, sitting in taverns, volunteer work, etc. Attention should be given to the pro-social/ anti-social significance or impact of their leisure activities.

Residential History: Information related to Residential History will be captured through entry in COMPAS. Information for this field may have been auto-populated from prior entries in the Residential History module. If information is not current or complete, additional information may be entered. Please refer to COMPAS Business Process for further clarification regarding completion of these modules.

This narrative section, should describe the current living situation, frequency of moves/stability, reasons for moving, relationship with landlords, and with whom the defendant has lived. If known, note physical conditions of the home and neighborhood.

Defendant Strengths: Certain defendant strengths are auto-populated from the COMPAS assessment, or as entered previously by the agent. As they are identified during the interview process, additional strengths should be entered on the Person Summary page.

SUMMARY AND CONCLUSIONS

Agent's Impressions: The purpose of this section is to interpret and analyze the facts from the body of the Pre-Sentence Investigation and to build the rationale for recommendation based on key information gathered. This section includes a professional analysis of the defendant, not personal opinion. This section should not include information copied from other sections in the body of the report.

This section should also include a reference to the primary factors the court takes into account at sentencing:

- The gravity of the offense;
- The rehabilitative needs of the defendant;
- The protection of the public; and
- The applicable aggravating or mitigating factors

All recommendations for incarceration must be based on one or more of these factors.

In addition, the Agent will integrate the COMPAS assessment information and any Alternative Screening Tool results with their professional judgment in a narrative format. The following areas should be addressed from the COMPAS and interview with defendant:

- Defendant Strengths (these may include Criminogenic Need scales that scored low in COMPAS);
- Criminogenic Needs specific to the defendant which are most likely to affect future criminal behavior;
- Risk to reoffend;
- Patterns of criminal or social behavior that are present and have contributed to the defendant being involved in criminal activity (Typologies, if applicable to the defendant, may be referenced);
- Inconsistent response pattern/Potential faking concern;
- Culpability;
- Community attitudes, including the victim's, should be considered;

Refer to the Order for Pre-Sentence Investigation report for pertinent statute information. Agent will take into consideration all aggravating factors as identified in Wisconsin Statute Ch. 973.017(3)to(8). These aggravation factors include, but are not limited to:

- Disguising/Concealing/Altering identity
- Gang-related activity
- Committing a serious sex crime while infected with HIV
- Violence against elderly persons
- Domestic abuse in the presence of a child

Restitution: This narrative section should include any restitution information acquired from a review of the District Attorney/Victim Witness file or the victim interview. The agent should recommend that court-ordered restitution should also be paid during the period of incarceration. Personally identifiable victim information (address, phone number, etc.) should not be documented in this section.

Agent Recommendation: This narrative section should identify an appropriate sentencing recommendation for the defendant, within statutory guidelines. The use of COMPAS in formulating a sentence recommendation does not replace professional judgment on the part of individuals who are using COMPAS in decision-making and should not be the sole or deciding factor in a sentencing recommendation. Sentencing recommendations can include fines and court costs, county jail time, probation, probation with conditional jail time, or a bifurcated prison term. A specific recommendation is to be made for each count regarding a range of time for imprisonment or probation. If the recommendation is for probation, the recommendation should include whether imposed and stayed or withheld. This recommendation must be based on the assessment instruments, aggravating and mitigating circumstances of the offense, and the goals of sentencing, as previously discussed in the Agent Impressions section.

Reference to any existing plea agreements or DA recommendation(s) should not be included in the pre-sentence investigation. Plea agreements are between the prosecutor and the defense. The judge is not bound by the plea agreement and it will be up to those parties to inform the court of any plea agreement. Reference to the plea agreement removes an element of neutrality in the report even if you are aware of the agreement.

If the Court requests that no recommendation be made, include the following in this section: "In compliance with the Judge's instructions on the Order for Pre-Sentence Investigation Report, no sentencing recommendation has been included in this report."

If felony PSI order includes a request for sentence recommendations on additional, misdemeanor offenses, the Department will provide recommendations for these also.

Effective 10/17/16, the following language will be automatically populated in the Pre-Sentence Investigation on a page prior to the bar chart:

Appendix A
ASSESSMENT CONSIDERATIONS

COMPAS (Correctional Offender Management & Profiling for Alternative Sanctions) is a validated actuarial assessment tool that predicts the general likelihood that a person will engage in subsequent criminal behavior in comparison to others with a similar history of involvement in the criminal justice system. In addition to recognizing general levels of risk to re-offend, COMPAS identifies criminogenic needs specific to the person that are most likely to impact future criminal behavior.

For purposes of evidence-based sentencing, actuarial assessment tools are especially relevant to: 1. Identify clients who are most appropriate for intervention. 2. Identify dynamic risk factors to target through conditions of supervision¹. Nonetheless, criminal justice officials should also be aware of the limitations of risk/need assessments and be cognizant of the following considerations:

1. Risk scores should never be used in determining the severity of the sentence or whether a person should be incarcerated. Additionally, risk scores should not be used as the determinative factor in deciding whether a person can be supervised safely and effectively in the community. Results may be used to formulate the manner in which sentence is to be served. Any sentencing decision that takes COMPAS results into consideration must explain what additional factors were considered to support decision.
2. Functioning only as a general risk assessment instrument, COMPAS does not attempt to specifically predict the likelihood that an individual defendant will commit a certain type of offense within the follow-up period. Rather, offense-specific instruments may be used to provide additional insight.
3. The proprietary nature of COMPAS has been invoked to prevent disclosure of information relating to how factors are weighed or how risk scores are determined. Like the standard

COMPAS, the COMPAS-R Core is a proprietary risk and needs assessment. However, it has been re-designed to be more transparent, so that scoring can be more readily understood by those using it. COMPAS-R Core reports and supporting documents should be considered private and are not to be shared with the public.

4. The COMPAS-R Core assessment was developed in 2021 and was implemented throughout the Wisconsin Department of Corrections in August 2022. Risk assessment compares defendants to a national sample, but no cross-validation study for a Wisconsin population has yet been completed. Once sufficient assessment data is available, the assessment will be normed on a Wisconsin population. Further, the Wisconsin Department of Corrections will conduct independent validation studies of the COMPAS-R Core that will examine general predictive validity and will remain committed to replicating these studies over time.

Bearing these considerations in mind, research suggests criminal justice officials will be positioned to make more informed decisions at all decision points, including the sentencing event, as a result of understanding risk/need information.

TRUTH IN SENTENCING PENALTY CHARTS

For felony offenses committed prior to February 1, 2003, the original term of probation shall not be less than 1 year, nor more than 3 years or the maximum term of imprisonment for the offense, whichever is greater. For offenses committed on or after February 1, 2003, the original term of probation for a felony is not less than 1 year, nor more than 3 years or the maximum term of confinement in prison, whichever is greater.

Please note that additional language related to sentence calculation in 973.09 (2)(a)(b) should also be included if applicable.

The agent should avoid recommending consecutive prison sentences unless the aggravating circumstances and goals of sentencing dictate the need for long-term restraint and punishment.

Agents should use the Bifurcated Sentence Recommendation Grids when making PSI sentencing recommendations on TIS I and TIS II offenses. TIS Booklet

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Agents should use profession judgment when making PSI sentencing recommendations on the following:

- Old law offenses (crimes committed prior to June 1, 1984)
- New law offenses (crimes committed between June 1, 1984 and December 30, 1999)
- Unclassified felonies
- Attempted crimes
- OWI offenses

Steps for using the Bifurcated Sentence Recommendation Grids:

1. Based on the date of the offense, determine if it is a TIS I or TIS II offense.
2. Complete a COMPAS assessment to determine the offender’s risk level.
3. Classify the offense as Mitigated, Neutral, or Aggravated. Agents must consider both Statutory Aggravating Factor and additional Aggravating/Mitigating Factors.
4. Locate the appropriate cell on the grid to determine the initial confinement and extended supervision recommendations.
5. Additional risk factors should be considered when deciding between a prison or probation recommendation.
6. If recommending probation, you will need to determine if you are making an imposed and stayed or withheld sentence recommendation. See the charts below for probationary term limits.

If requesting a deviation from the grid recommendations, approval must be granted through a staffing with the regional office.

Truth in Sentencing I Penalty Chart and Guidelines

FOR CLASSIFIED OFFENSES COMMITTED BETWEEN 12/31/99 AND 01/31/03

FELONY CLASS	MAXIMUM IMPRISONMENT	MAXIMUM INITIAL CONFINEMENT	EXTENDED SUPERVISION*	MAXIMUM PROBATION
A	Life	Life		
B	60 years	40 years	20 years (Max could be up to 59 years)	60 years

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BC	30 years	20 years	10 years (Max could be up to 29 years)	30 years
C	15 years	10 years	5 years (Max could be up to 14 years)	15 years
D	10 years	5 years	5 years (Max could be up to 9 years)	10 years
E	5 years	2 years	3 years (Max could be up to 4 years)	5 years

*Minimum ES = 25% of the initial incarceration

*Maximum ES = maximum allowable imprisonment minus initial confinement

- Bifurcated Sentence (Maximum Imprisonment) = Initial Confinement + Extended Supervision
- Minimum Term of Initial Confinement = 1 year
- Minimum Term of Extended Supervision = 25% of the Initial Confinement.
- Maximum Term of Extended Supervision = maximum allowable imprisonment minus initial confinement
- Initial Confinement + Extended Supervision may not exceed the Maximum Imprisonment set forth by statute.
- For Unclassified felonies, the initial term of confinement may not exceed 75% of the total length of the bifurcated sentence.
- When placing the defendant on probation with an Imposed and Stayed prison sentence, the imposed and stayed prison sentence must be bifurcated.
- A Bifurcated sentence is **not** permitted for a felon or misd sentenced to the county jail or house of corrections.

Probation Terms for Misdemeanors under ACT 25 (crimes committed on or after 7/27/05): not less than 6 months nor more than 1 year probation

- Up to 3 years if defendant is convicted of 2-4 misd at the same time
- Up to 4 years if defendant is convicted of 5 or more misd at the same time

Probation Terms for Assaultive Misdemeanors: not less than 6 months nor more than 2 years probation

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- A misdemeanor that the defendant committed while possessing a firearm
- A misdemeanor in the act of domestic abuse (domestic abuse means against spouse/former spouse or an adult that the person resides or formerly resided or against an adult with whom the person has a child in common)
- A misdemeanor under 940.225(3m) – 4th degree sexual assault
- A misdemeanor under Chapter 948 – crime(s) against children

Truth in Sentencing I Unclassified Offense Penalty Chart

FOR UNCLASSIFIED OFFENSES COMMITTED BETWEEN 12/31/99 AND 01/31/03

*The term of confinement may not exceed 75% of the total length of the bifurcated sentence.

*The term of extended supervision may not be less than 25% of the confinement time.

MAXIMUM IMPRISONMENT	MAXIMUM CONFINEMENT TIME	RECOMMENDED CONFINEMENT GRID RANGES	MAXIMUM EXTENDED SUPERVISION (if max confinement time given)	RECOMMENDED EXTENDED SUPERVISION GRID RANGES
45 YEARS	33 YRS 9 MOS	1-11 YRS (1-33%) 11-22 YRS (33-66%) 22-33 YRS 9 MOS (66-100%)	11 YRS. 3 MOS	5-8 YRS 5 YRS-11 YRS. 3 MOS. 5 YRS. 6 MOS.-11 YRS.3 MOS
30 YEARS	22 YRS 6 MOS	1-7 YRS (1-33%) 7-15 YRS (33-66%) 15-22 YRS 6 MOS (66-100%)	7 YRS 6 MOS.	10-15 YRS 5-11 YRS 3 YRS 9 MOS - 7 YRS 6 MOS
22 YRS 6 MOS	16 YRS 10.5 MOS	1 YR - 5 YRS 6 MOS (1-33%) 5 YRS 6 MOS - 11 YRS (33-66%)	5 YRS 6 MOS	7-11 YRS 4-8 YRS 2 YRS 9 MOS – 5 YRS 6 MOS

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		11 YRS - 16 YRS 10.5 MOS (66-100%)		
15 YEARS	11 YRS 3 MOS	1-4 YRS (1-33%) 4-7 YRS (33-66%) 7 YRS - 11 YRS 3 MOS (66-100%)	3 YRS 9 MOS	5-8 YRS 3-5 YRS 1 YR 9 MOS - 4 YRS
7 YRS 6 MOS	5 YRS 7.5 MOS	1 YR 3.6 MOS (OR) 2 YRS - 5 YRS 7.5 MOS	1 YR 10.5 MOS	2 YRS - 5 YRS 7.5 MOS (OR) 1-3 YRS
6 YEARS	4 YRS 6 MOS	1-3 YRS (OR) 2 - 4 YRS 6 MOS	1 YR 6 MOS	2 YRS - 4 YRS 7.5 MOS (OR) 1-3 YRS
4 YRS 6 MOS	3 YRS 4.5 MOS	1-3 YRS 4.5 MOS	1 YR 1.5 MOS	3 MONTHS - 1 YR 1.5 MOS
36 MONTHS	27 MONTHS	12-27 MONTHS	9 MONTHS	3-9 MONTHS
27 MONTHS	20 MOS 8 DAYS	12-20 MONTHS	6 MOS 23 DAYS	3-7 MONTHS
24 MONTHS	18 MONTHS	12-18 MONTHS	6 MONTHS	3-6 MONTHS

Truth in Sentencing II Penalty Chart and Guidelines

FOR CLASSIFIED OFFENSES COMMITTED AFTER FEBRUARY 1, 2003

FELONY CLASS	MAXIMUM IMPRISONMENT	MAXIMUM CONFINEMENT	MAXIMUM EXTENDED SUPERVISION	MAXIMUM PROBATION
A	Life	Life		
B	60 years	40 years	20 years	40 years
C	40 years	25 years	15 years	25 years

D	25 years	15 years	10 years	15 years
E	15 years	10 years	5 years	10 years
F	12.5 years	7.5 years	5 years	7.5 years
G	10 years	5 years	5 years	5 years
H	6 years	3 years	3 years	3 years
I	3.5 years	1.5 years	2 years	3 years

TIS II -- § 973.01, et al (as amended by 2001 Wisconsin Act 109)

- Applies to offenses committed on or after February 1, 2003
- Maximum Imprisonment = Initial Confinement + Extended Supervision
- Minimum Term of Initial Confinement: 1 year
- Minimum Term of Extended Supervision: not less than 25% of the term of Initial Confinement
- Initial Confinement + Extended Supervision may not exceed Maximum Imprisonment
- Minimum Term of Probation: 1 year for felony; 6 months for misdemeanor

Probation Terms for Misdemeanors under ACT 25 (crimes committed on or after 7/27/05): not less than 6 months nor more than 1 year probation

- Up to 3 years if defendant is convicted of 2-4 misd at the same time
- Up to 4 years if defendant is convicted of 5 or more misd at the same time

Probation Terms for Assaultive Misdemeanors: not less than 6 months nor more than 2 years probation

- A misdemeanor that the defendant committed while possessing a firearm
- A misdemeanor in the act of domestic abuse (domestic abuse means against spouse/former spouse or an adult that the person resides or formerly resided or against an adult with whom the person has a child in common)
- A misdemeanor under 940.225(3m) – 4th degree sexual assault
- A misdemeanor under Chapter 948 – crime(s) against children

Probation Terms for Felonies:

- 973.09(2)(b)1 Not less than 1 year nor more than either the maximum term of confinement in prison or 3 years, whichever is greater.

- 973.09(2)(b)2 If the probationer is convicted of 2 or more crimes, including at least one felony, at the same time, the maximum original term of probation may be increased by one year for each felony conviction.
- One felony and one misdemeanor conviction would allow for an additional year of probation at sentencing.

.07 MANDATORY AND PRESUMPTIVE MINIMUM SENTENCE RECOMMENDATIONS

The agent shall utilize the sentencing recommendation grid to determine the recommendation for offenses that that have mandatory minimum or presumptive minimum penalties. If the grid recommendation is lower than the mandatory or presumptive minimum, the recommendation shall be the be the mandatory or presumptive minimum for that offense unless override procedures are followed.

Mandatory Minimum Sentences - WI Stat § 939.616

<u>Offense</u>	<u>Felony Classification</u>	<u>Mandatory Minimum Confinement</u>
948.02(1)(am) - Sexual intercourse with a person who has not attained the age of 13 and causes great bodily harm	A	25 yrs
948.025(1)(a) - 3 or more violations under 948.02, at least 3 of the violations were of 948.02(1)(am)	A	25 yrs
948.02(1)(b) - Sexual intercourse with a person who has not attained the age of 12	B	25 yrs
948.02(1)(c) - Sexual intercourse with a person who has not attained the age of 16 by use or threat of force or violence	B	25 yrs
948.025(1)(b) - 3 or more violations of 948.02(1)(am), (1)(b) or (1)(c)	B	25 yrs

948.02(1)(d) - Sexual contact with a person who has not attained the age of 16 yrs by use or threat of force or violence; and actor must be at least 18 years of age	B	5 yrs
948.025(1)(c) - 3 or more violations where at least 3 were violations of 948.02(1)(am), (b), (c) or (d)	B	5 yrs

Presumptive Minimum Sentences - WI Stat § 939.617

<u>Offense Penalty</u>	<u>Felony Classification</u>	<u>Presumptive Minimum Confinement</u>
948.05 - Sexual Exploitation of a Child*	C	5 yrs.
948.075 - Use of a Computer to Facilitate Child Sex Crime	C	5 yrs.
948.12 - Possession of Child Pornography*	D	5 yrs.

The presumptive minimum penalties do not apply if the offender is under 18 years of age when the crime was committed. Per sec. [939.617\(2\)](#), the court may impose a sentence that is less than the sentence required, or may place the person on probation, if the court finds that the best interests of the community will be served and the public will not be harmed and if the court places its reasons on the record.

* The court shall impose a child pornography surcharge of \$500 for each image or each copy of an image associated with the crime.

.08 UNDOCUMENTED PERSONS

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During the presentence investigation process, if the offender admits that he/she is undocumented or if other credible information is received indicating this, the agent should send a request for verification of the offender's identity and immigration status to the Immigration and Custom Enforcement (ICE) office in Milwaukee. This request should contain, if available, the offender's name, date of birth, social security number, NCIC number, state identification number, as well as the name and telephone number of the requesting agent. The investigating agent should attempt to obtain as much specific information as possible regarding the offender's ties to the United States and his country of origin.

If the agent learns the offender's Immigration A#, it should be documented in the presentence investigation. If the offender is confirmed to be in the United States illegally, the agent should determine whether ICE intends to place an immigration detainer on the offender.

Offender is to be Deported:

If ICE reveals the offender to be an undocumented person and has confirmed the intent to deport the offender immediately or upon completion of local or state incarceration, the detainer should be documented in the Pending Charges Section. If the offender is deported after the assessment has been completed, last known address should be entered and "Foreign Country" should be selected from the "State" drop down menu.

When a term of supervision is being recommended by the agent, the following court-ordered conditions should also be recommended:

1. Not enter or be in the United States without proper documentation of lawful presence;
2. Report to probation/parole agent within 72 hours of entry, legal or illegal, into the United States;
3. Report any changes in immigration status to probation/parole agent within 72 hours;
4. Contact probation/parole agent within 24 hours of release from ICE custody within the United States.

Offender is not to be Deported:

If ICE determines that the offender is undocumented, but does not plan to deport either immediately or upon completion of a term in local custody, document this information in the Residence Section.

.09 Recommended Conditions of Probation or Extended Supervision: Conditions of supervision are to always include:

- Supervision fees;
- Submission of a DNA sample, if not previously obtained;
- Payment of court obligations;
- Treatment, if applicable. When recommending conditions related to programming or treatment needs, it is preferred that it is phrased that the offender is required to comply with any treatment/programming as deemed appropriate by the COMPAS assessment and agent;
- Other conditions as appropriate to include community service; and
- Relevant restrictions

Anticipated Supervision Plan: If probation is being recommended, this sections provides a narrative of identified criminogenic need drivers and suggested case plan goals. References regarding treatment should not include a specific provider or site recommendations. This may restrict the necessary flexibility needed due to factors related to the defendant and the dynamic nature of readiness for treatment or changing needs.

Agent e-signature, followed by the Supervisor's e-signature: Required on all pre-sentence investigations.

Sources of Information: This required section includes all sources utilized in the investigation.

PSI File Material Routing: Upon completion of the pre-sentence investigation, all file materials must be processed according to one of the following:

- If the defendant is already on community supervision or will be under DOC supervision, materials will be retained and incorporated with the active case file.
- If the defendant is sentenced to a straight jail term or non-DOC supervision the PSI file shall be retained.

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Upon completion and following supervisor approval, the PSI must be uploaded to the Electronic Document Exchange via PSI Upload located in Applications – My Apps on MyDOC.

The PSI will automatically be saved to Virtual Folders. If the offender already has a DOC number, it will be saved in folder labeled with that offender's DOC number. If the offender does not have a DOC number, the PSI document will be saved in the PSI_REVOCATION Virtual Folder but not in a specific offender folder. The document is named by County, Court Case Number, and Last, First, MI. If an offender without a DOC number is then sentenced to either prison or probation supervision, the PSI must be moved upon issuance of the DOC number to the folder labeled with the appropriate offender number in Virtual Folders. If the offender receives a Non-DOC sentence, the PSI must be removed from Virtual Folders.

Portal 100/NCIC/CIB records must be destroyed immediately following sentencing.