ADMINISTRATIVE OFFICE OF THE COURTS

PRESENTENCE REPORTS TO JUDGES

REPORT TO THE 1988 SESSION

OF THE

NORTH CAROLINA GENERAL ASSEMBLY

120278

ADMINISTRATIVE OFFICE OF THE COURTS
JUSTICE BUILDING
P. O. BOX 2448
RALEIGH, NORTH CAROLINA 27602

May 18, 1988

TO THE MEMBERS OF THE 1988 SESSION OF THE GENERAL ASSEMBLY:

The Administrative Office of the Courts submits this report on PRESENTENCE REPORTS TO JUDGES, pursuant to Chapter 19 of the 1987 Session Laws.

Respectfully,

Franklin Freeman, Jr.

Franklin Freeman, Jr.
Director

ACKNOWLEDGEMENTS

I express my deep gratitude to the many people who aided us by collecting data needed for this report: the 100 Clerks of Superior Court throughout the State, and their staffs, who had the burden of a special four-month data reporting to the Administrative Office of the Courts, from which annual projections of convictions in the trial courts could be made; the Division of Adult Probation and Parole of the Department of Correction, and probation officers across the State, who also took on a burden of special data reporting to AOC for a four-month period, so that annual projections of presentence report activity could be calculated in a format needed for this study; and the Division of Victim and Justice Services of the Department of Crime Control and Public Safety which provided extensive information on the operation of community penalty programs in the State.

Appreciation is expressed to the following who took time out of their busy schedules to complete a lengthy opinion survey form for AOC: superior court judges and district court judges throughout the state; district attorneys; public defenders; probation officers and unit supervisiors; criminal defense attorneys in private practice; and community penalty program planners. AOC directors in other states were extremely helpful in getting information to us on practices in those states relevant to presentence reports to judges.

Finally, I acknowledge with much appreciation the extensive work of Mr. Robert Giles, Director of the Research and Planning Division of the Administrative Office of the Courts and of Mr. Richard Kane, Research Associate, in planning and carrying out the detailed studies involved, and in preparing materials for my consideration.

Franklin Freeman, Jr.

May 18, 1988

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INTRODUCTION

"Presentence reports" are intended to assist judges when sentencing a convicted criminal defendant by providing the judge with information about the defendant. These reports may give information about the offense that was committed, the defendant's criminal and social history, family, employment, and financial status, character, capabilities, and limitations. Some reports in North Carolina emphasize information about resources for appropriate alternatives to a prison sentence. The role of presentence reports in the criminal justice system is premised on their importance, and arguably their necessity, for assuring that a judge's sentencing discretion is based on accurate and relevant information about the person who, for all but the most serious offenses in North Carolina, the judge may imprison or set free.

This study was mandated by Chapter 19 of the 1987 Session Laws, the full text of which is set forth in Appendix A. Specific issues that the General Assembly directed the Administrative Office of the Courts to address include the current use of presentence reports, when they should be prepared, who should prepare them, what they should contain, and whether they should be mandatory for any, or all, cases.

The first several sections of this report provide the legal and empirical base for subsequent analysis. This will include summaries of the laws and legal issues that

bear upon use of presentence reports; case and survey data on use of presentence reports; and an overview of use of presentence reports in federal courts and other states. The final sections of this report attempt to integrate all of this information and identify what seem to be the soundest alternatives regarding use of presentence reports.

There is an important caveat. This is not an evaluation of the impact presentence reports have on sentencing. The individual case data and controlled environment necessary for such analysis were unavailable for this study. Yet, the question of impact should not be ignored. The national literature largely assumes that presentence reports are essential to "good" sentencing. This assumption is based on the intuitive and policy conclusion that "better" sentences will result from, and that it would be unfair to sentence without, good, extensive information about the defendant. Research has found that special sentencing programs in North Carolina have successfully diverted offenders from prison, by providing sentencing judges with information about alternatives to prison. There is in general, however, little empirical evidence that presentence reports actually lead to "better" sentences; but the absence of empirical evidence which clearly establishes either the value or lack of value of presentence reports generally should not necessarily be regarded as leaving the issue in such doubt as to justify dispensing with presentence reports to

judges. It is not possible after all to have a "controlled" sentencing experiment under which the same defendant, on the identical offense and with identical facts and circumstances, is sentenced by the same judge twice: first, with a presentence report to the judge and then, second, in the absence of a presentence report to that same judge in that case. Even if such were possible, there would still be left the question: which produces the "better" sentence? What is a "better" sentence is itself a matter of highly subjective judgment as to which well-informed persons could well disagree in any individual case. Thus, the value of presentence reports to judges may well be a matter on which intuitive policy conclusions will produce the best "evidence" that can be produced; and the national literature and practice which assumes that presentence reports are essential to "good" sentencing should, therefore, be given substantial weight.

This study attempts to integrate the diverse policy considerations that bear upon use of presentence reports, in the context of the best descriptive data available. This begins with a summary of the laws that govern the vast majority of presentence reports submitted to judges, reports prepared by probation officers.

I. CURRENT USE OF PRESENTENCE REPORTS IN NORTH CAROLINA

A. NORTH CAROLINA STATUTES GOVERNING PRESENTENCE REPORTS PREPARED BY DEPARTMENT OF CORRECTION

North Carolina statutes identify two types of "presentence reports": a "presentence investigation" and a "presentence commitment for study."[1] Neither is mandatory in any case; whether or not a presentence report is ordered is within the discretion of the judge.

1. "Presentence Investigations" (G.S. 15A-1332(b))

A judge may order a probation officer to conduct a "presentence investigation" into "all circumstances relevant to sentencing," for any defendant, in superior or district court. The only statutory limitation on contents is that the report may not give a recommendation as to sentence unless the judge requests. This type of report may be presented orally or in writing.

A presentence investigation must be ordered after conviction, unless the defendant moves for an earlier investigation. This limitation may be significant in view of the rotation system of superior court judges. Superior court judges "rotate" on assignment by the Chief Justice from county to county and judicial district to district.[2] Thus, if there were to be a delay in acquiring a presentence report after conviction, the judge who presided over determination of guilt could be rotated to a different county or district before the presentence report is ready for submission.

In practice,[3] when a judge orders a presentence investigation, the judge will typically specify what information is desired and/or may specify which of three standardized forms (reproduced in Appendix B) the probation officer should use. These forms, prepared by the Department of Correction (DOC), differ in the amount of detail they provide, ranging from a one-page form typically used as the basis for an oral report, to a six-page form typically submitted to the judge in writing.

2. "Presentence Commitment for Study" (G.S. 15A-1332(c))

When a judge desires more detailed information than can be provided by a presentence investigation, the defendant may be committed to DOC for up to 90 days if two conditions are met: the defendant must consent, and the defendant must have been charged with or convicted of a crime punishable by imprisonment for more than six months. The limitation regarding length of possible punishment limits use of presentence commitment for study to cases punishable by prison sentences that would be served in a DOC as opposed to a local facility.[4]

The statute requires DOC to conduct a "complete study" into "such matters as the defendant's previous delinquency or criminal experience, his social background, his capabilities, his mental, emotional, and physical health, and the availability of resources or programs appropriate to the defendant." In practice, if a presentence

commitment is ordered, a probation officer will prepare a report using the most detailed of the three standardized presentence investigation forms. This report is sent to the "diagnostic center" to which the defendant is committed.[5] The diagnostic center will conduct the "complete study" and submit a written report to the court.[6]

3. Defendant's Statutory Rights: Confidentiality, Access, and Rebuttal (G.S. 15A-1333 and 1334)

Presentence reports are not public records. On defendant's motion, the judge may expunge a written report or the record of an oral report from the court record.

An exclusive right of access to presentence reports is granted by statute to the defendant, defendant's lawyer, and the prosecutor "at any reasonable time"; no presentence report can be presented to the judge off the record, with defendant and defense counsel absent.[7]

The defendant is afforded an opportunity to challenge or supplement the contents of a presentence report, by virtue of a mandatory sentencing hearing (waivable by defendant) at which evidence bearing upon sentence may be presented by the defendant and the State.[8] It should be emphasized that the sentencing hearing affords the parties the opportunity to present information relevant to sentencing quite apart from whether or not a presentence report has been ordered.

4. Legislative History

Presentence reports have been recognized by statute in North Carolina since 1937.[9] When present law governing presentence reports was enacted in 1977, the General Assembly made substantive changes that are directly relevant to this study.

Until 1977, presentence reports were not strictly discretionary. When the services of a probation officer were available, no defendant charged with a felony and, "unless the court (should) otherwise direct in individual cases," no other defendant could be placed on probation or released on a suspended sentence until a presentence report was prepared and considered.[10]

Second, the 1937 statute directed probation officers to submit a written report.

Finally, prior law had no express limitation on when a presentence investigation should be prepared, other than "when directed by the court."[11] The implication of prior law would seem to be that a presentence report could be ordered before or after conviction.

Present law has remained substantially unchanged since 1977.[12] However, implementation of the "Fair Sentencing Act" (FSA)(G.S. 15A-1340.1 et. seq.) in 1981 represented a major change in the law for the sentencing of felons. As was suggested then, the FSA has possible policy implications for presentence reports.

Prior to the FSA, a judge's sentencing discretion was virtually unguided by statutory criteria. Under the FSA, any prison term imposed must be the "presumptive" term fixed by statute unless aggravating or mitigating circumstances, supported by the evidence, are found to justify deviation.[13] The FSA does not eliminate judicial discretion in sentencing felons.[14] Rather, the FSA focuses discretion on specific factual criteria which the judge must apply in order to impose a harsher or more lenient prison sentence than what the Act prescribes as presumptively appropriate.

When the FSA was enacted, the Governor's Crime Commission concluded that verified presentence reports would be "essential" in felony cases, to inform judges about aggravating and mitigating circumstances under the Act.[15] The Commission recommended that presentence reports be mandatory in all felony cases, unless the judge should order otherwise in individual cases. A similar conclusion was suggested recently by the Institute of Government; a study of the impact of the FSA questioned whether the Act's goal of consistency in sentencing could be achieved unless a written presentence report is submitted in every case.[16]

B. DEPARTMENT OF CORRECTION DATA: PRESENTENCE REPORTS PREPARED BY PROBATION OFFICERS

During November and December, 1987, and January and February, 1988, DOC reported data to AOC on the number of presentence reports submitted to judges.[17] For convenience

of planning and other analysis, these four months of data are projected to and presented as estimated annual numbers of presentence reports submitted.[18]

Reported data identify the number of presentence reports submitted broken down by court (superior and district); crime-type in superior court (felony and misdemeanor); age of offender (under 21, and 21 and older); and type of presentence report. Data were reported for five types of presentence reports, corresponding to the three standardized forms used by DOC for presentence reporting, and the following five uses of these forms:

1. DOC form PSI 1, used by the probation officer as the basis for an oral report to the court, and not submitted in writing ("PSI" stands for "presentence investigation");

2. DOC form PSI 1, submitted to the court in writing;

3. DOC form PSI 2, a more detailed form than PSI 1, submitted to the court in writing;

4. DOC form PSI 3, the most detailed of the three PSI forms, submitted to the court in writing; and

5. PSD ("presentence diagnostic"), for which the probation officer completes a PSI 3 form, but submits it to a DOC diagnostic center rather than directly to the judge; the diagnostic center uses information in the PSI 3 report as part of its study, and may or may not physically include the PSI 3 form as part of its report to the judge.

The table that follows gives state totals for all categories of data reported.

In summary, most (61% of all) presentence reports projected annually are oral reports in district court (10,066 of 16,610). Written reports for both courts

combined comprise only 23% of all reports (3,845 of 16,610). The most detailed written reports (form PSI 3) comprise only 3% of all reports projected annually (537 of 16,610, including PSI 3 reports for a presentence diagnostic study).

Considering written and oral reports together, 76% are submitted for district court cases (12,642 of 16,610). Superior court felonies account for only 20% (3,374 of 16,610) of all presentence reports projected annually.

PRESENTENCE REPORTS SUBMITTED BY PROBATION OFFICERS (DOC)

Estimated Annual State Totals*

	--- Submitted Directly to Judge ---					
	Oral	PSI 1	PSI 2	PSI 3	PSI 3 for PSD	GRAND TOTALS
Superior Court						
FELONIES						
Age 21 or over	1,617	140	311	136	72	2,276
Under age 21	600	99	296	73	30	1,098
TOTAL FELONIES	2,217	239	607	209	102	3,374
MISDEMEANORS						
Age 21 or over	290	22	8	18	0	338
Under age 21	192	21	37	1	5	256
TOTAL MISDEMEANORS	482	43	45	19	5	594
TOTALS						
Age 21 or over	1,907	162	319	154	72	2,614
Under age 21	792	120	333	74	35	1,354
TOTAL SUPERIOR	2,699	282	652	228	107	3,968
District Court (Misdemeanors Only)						
Age 21 or over	6,160	481	924	88	31	7,684
Under age 21	3,906	383	586	77	6	4,958
TOTAL DISTRICT	10,066	864	1,510	165	37	12,642
Both Courts						
Age 21 or over	8,067	643	1,243	242	103	10,298
Under age 21	4,698	503	919	151	41	6,312
GRAND TOTALS	12,765	1,146	2,162	393	144	16,610

*Annual totals are projections based on actual data reported during November and December, 1987, and January and February, 1988. Details regarding calculation of annual totals are given in note 18, and an explanation of the data categories on this table is on the preceding pages.

C. COMMUNITY PENALTIES PROGRAMS

In some judicial districts, judges receive information for sentencing in the form of a "community penalty plan" prepared by personnel within Community Penalties Programs funded mostly (typically 80%) by the State. These programs are governed by the Community Penalties Act of 1983 (G.S. 143B-500), the express purpose of which is to "reduce prison overcrowding by providing the judicial system with community sentences to be used in lieu of and at less cost than imprisonment." At present, Community Penalties Programs are established with state funding in 13 judicial districts.[19]

Like probation officers' reports, community penalty plans are intended to provide the judge with background information about the defendant. However, community penalty plans contain detailed sentencing proposals, for community-based sentences in lieu of (or with reduced) active prison terms. In contrast, a probation officer's presentence investigation may not give a recommendation as to sentence unless the judge specifically requests.

This is not merely a difference in content or form. Rather, it reflects a fundamental difference in orientation and purpose.

To reduce prison overcrowding, Community Penalties Programs systematically strive for alternatives to prison. Although individual community penalty plans may recommend some active prison sentence, or conclude that a community-

based sentence would be inappropriate for an individual offender, Community Penalties Programs would fail of their statutory purpose if overall they did not support alternatives to prison. And, there are research findings that Community Penalties Programs in North Carolina have been successful in diverting offenders from prison.[20]

Presentence reports from probation officers, in contrast, may be described as "sentence-neutral." They are not intended to systematically strive for any particular sentence. Information in a probation officer's report is intended to assist the judge in arriving at any sentence most appropriate for the individual offender, be it prison or otherwise.

This difference in orientation, presumably, is what lies behind the legislative decision to establish the administrative organization of Community Penalties Programs distinct from probation officers employed by the DOC, Division of Adult Probation and Parole. Another related, and important, difference is that Community Penalties Programs limit or "target," their services to offenders who might be diverted from prison. DOC presentence reporting services, in contrast, are not limited to any particular type of offender.

Although all Community Penalties Programs share these differences in orientation as compared to the "sentence-neutral" focus of the DOC Probation Division, not all programs are identical in organization or operation.

Twelve of the 13 Community Penalties Programs are private nonprofit corporations awarded State appropriations in the form of grants administered by the Department of Crime Control and Public Safety (DCCPS).[21] The remaining Program (in Buncombe County) was transferred to AOC in 1987.[22] Employees of this program are state employees appointed by the Director of AOC upon recommendation of the Chief District Court Judge, and are under the direct supervision of the Chief District Court Judge.

Within programs under DCCPS grant and administration, plans are prepared by employees of private, nonprofit, community-based agencies.[23] The plans are prepared in cooperation with the defendant's lawyer (such that no plan will be prepared if defendant's lawyer refuses the program's services), and are presented to the judge by the defendant's lawyer. DCCPS Programs strive to bring community-based input into the sentencing process. More specifically, these Programs strive to utilize the defense attorney's traditional duty to provide the judge with information relevant to the least restrictive punishment alternative, but to do so from the perspective of community-based advocacy for appropriate prison alternatives, as opposed to advocacy for the defendant.[24]

Within the Buncombe program, community penalty plans are prepared by state employees under the supervision of a judge, and are presented to the judge by Program personnel. Although the defendant's cooperation is important on a

practical level for obtaining information and for the prospects of a successful community-based sentence, an investigation could be conducted on the judge's order regardless of the wishes of defendant or counsel. While this approach seems to emphasize the importance of judicial control over the sentencing process, community-based input is provided in the form of an Advisory Board that reports to the judge.

A second difference between Community Penalties Programs relates to the question of which offenders plans should be prepared for. By statute, DCCPS programs must limit, and affirmatively target, their services to nonviolent misdemeanants and nonviolent Class H, I, and J felons who "are facing an imminent and substantial threat of imprisonment."[25]

The Buncombe program, in contrast, may conduct an investigation of <u>any</u> offender for whom the judge orders a plan prepared; in effect, for the Buncombe program, the judge makes the initial determination of which offenders a plan should be prepared for.[26] (All other Programs, in contrast, target offenders without necessary involvement of the judge.)

These different approaches toward who prepares community plans, and for which offenders, seem to represent differing legislative conclusions for how these Programs might best achieve the goal of diverting offenders from prison. But more than that, these differences call

attention to the priorities that must be balanced not just for Community Penalties Programs, but similarly for all presentence reporting. These priorities include the traditional discretionary control judges exercise over the sentencing process; legislative decisions to override or limit such discretion; the importance of local commitment to, acceptance of, and arguably control over community-based alternatives to incarceration; the need for objectivity in information provided to judges for sentencing; the importance of the defendant's and counsel's commitment to an alternative sentencing plan; and the need to efficiently control and coordinate the various personnel involved in the sentencing process.

D. DATA ON THE OPERATIONS OF COMMUNITY PENALTIES PROGRAMS

DCCPS provided raw data to AOC on community penalty plans presented to judges from July, 1987, through February, 1988. The following table gives state totals compiled from this raw data.

In summary, during the first eight months of 1987-88, 219 community penalty plans were presented to judges statewide; 88% (194) were for felony cases in superior court. Of the 219 plans presented to judges, the Programs report that 54% (119) were accepted by the judge in full, and 35% (77) were accepted in part, for a total (full or part) acceptance rate of 89% (196).[27]

COMMUNITY PENALTIES PROGRAMS

Community Penalty Plans Presented to Judges and Accepted (in Full or Part) or Rejected By the Judge

STATE TOTALS--By Court, Case-type, and Age of Offender

July, 1987, through February, 1988*

	Plans Accepted In Full	Plans Accepted In Part	Plans Rejected	Total Plans Presented
Superior Court				
FELONIES				
21 and over	63	50	16	129
Under 21	36	24	5	65
TOTAL FELONIES	99	74	21	194
MISDEMEANORS				
21 and over	6	1	0	7
Under 21	0	0	1	1
TOTAL MISDEMEANORS	6	1	1	8
TOTAL SUPERIOR				
21 and over	69	51	16	136
Under 21	36	24	6	66
TOTAL SUPERIOR	105	75	22	202
District Court (Misdemeanors Only)				
21 and over	13	1	1	15
Under 21	1	1	0	2
TOTAL DISTRICT	14	2	1	17
Grand Totals				
21 and over	82	52	17	151
Under 21	37	25	6	68
GRAND TOTAL	119	77	23	219

*Data were assembled by AOC from raw data, in the form of "cover sheets," provided by DCCPS. Data were missing for one program for one month. Unlike other data presented in this report, these are actual data counts, not annualized projections. Since some programs have not been operating during the entire period included here, and other programs are just now becoming operational, annualized projections would be extremely problematic.

The Act specifies that community-based penalties are to be used in lieu of and at less cost than imprisonment. Based on empirical study by the Institute of Government, it may be assumed that the 196 accepted plans resulted in some reduction in the prison time that would have been served by those offenders in the absence of a community penalty plan.[28] It is far too speculative to estimate the exact amount of prison time diverted. However, given the extremely high cost of imprisonment, it seems that a strong case can be made for the cost-effectiveness of Community Penalties Programs. The current average daily cost for imprisonment in a minimum custody facility is $27 per prisoner per day.[29] If as few as 180 days of prison time were saved on the average for each of the 196 offenders for whom plans were accepted, then a total of 35,280 prison-days (180 x 196) were saved. At $27 per prisoner per day, this would translate to a total gross savings of $952,560 for the first eight months of fiscal 1987-88. This would exceed the total amount appropriated to DCCPS for implementation of the Community Penalties Act for all of 1987-88 ($761,800), and not all Programs were operational during much, or any, of the first eight months.

Although apparently cost-effective, each community penalty plan presented to a judge is relatively expensive. According to DCCPS data for 1986-87, a total of 240 plans were presented to judges and a total of $491,000 was awarded by DCCPS to the various Programs to implement the

Act; this translates into an average state cost (not including the Programs' own funds) of $2,046 per plan presented. This high cost, however, seems to imply a comparatively thorough report. Within an AOC survey conducted for this study, Community Penalties Program personnel reported that an average of 34 (33.6) hours are devoted to each investigation and report. This compares to an average of between 2 and 17 hours (depending on the form) reported by probation officers. (Details on cost and time data for DOC presentence reports are given in Section VIII of this report.)

Additional data provided by DCCPS for fiscal 1986-87 seem to show that Community Penalties Programs are not yet operating at full capacity. CPP potential can be examined in terms of the maximum numbers of persons who could be diverted from prison under the Act. According to data provided by DCCPS, during 1986-87 approximately 1,425 offenders were admitted to state prisons from Program counties for nonviolent Class H, I, and J felonies. To some extent, these 1,425 admissions overestimate the maximum number of offenders Community Penalties Programs might reach; some of these offenders were likely poor (or ineligible) candidates to be diverted from prison.[30] On the other hand, this prison admission estimate does not include misdemeanants. Although inevitably rough, the following data seem to indicate that at present Community

Penalties Programs are reaching relatively low percentages of the offenders who are eligible under the Act.

Community Penalties Programs: Numbers of Offenders Contacted, Plans Presented, and Plans Accepted by Judges, Compared to Estimated Numbers of Offenders Admitted to State Prisons for Nonviolent Class H, I, or J Felonies

State Totals for CPP Counties, Fiscal 1986-87

	Number	As % of Admissions
Prison Admissions	1,425	---
Offenders Contacted	741	52%
Plans Presented	240	17%
Plans Accepted	204	14%

A final aspect of CPP data examined here relates to the reasons for why a community penalty plan is not presented for all offenders that are contacted. Over half of the offenders contacted during 1986-87 were refused services or withdrew from the Programs' services. Most of these refusals/withdrawals (56%) were by reason of the ineligibility of the defendant, plea arrangements, acquittals, or dismissals. Some 13% of the refusals/withdrawals related to noncooperation of defendant or counsel.[31]

II. CASE DATA - NUMBER OF PERSONS CONVICTED OF CRIMES

To more completely understand the extent to which presentence reports are used in North Carolina, it is necessary to compare the number of reports submitted to the number of persons convicted. The number of persons convicted also represents the maximum number of reports that would be prepared if reports were mandatory.

Clerks of superior court in all 100 counties provided data for this study on the number of persons convicted.[32] This data corresponds to the data provided by DOC on the number of presentence reports prepared: it was collected over the same four-month time period, is presented as projected annual totals, and is broken down by court (superior and district), case-type in superior court (felony and misdemeanor), and age of offender (under 21, and 21 and over).[33]

Superior court data represent all persons convicted of any crime. District court data represent only persons convicted of any crime and given any active prison or jail sentence.

The reason for limiting district court data to persons who received an active sentence relates to the high volume of district court criminal cases. During fiscal year 1986-87, 984,043 criminal cases were disposed of statewide in the district courts. It seems evident that not all

district court cases are pertinent to analysis of presentence reporting; the bulk of these are motor vehicle cases.[34]

Offenders who received some active sentence will, in general, represent the most serious offenses tried in district court. Although inevitably inexact, these cases are believed to provide a good planning estimate of the number of district court cases reasonably relevant to presentence reporting.[35]

The table that follows gives state totals for all data collected on the number of persons convicted.

NUMBER OF PERSONS CONVICTED IN SUPERIOR COURT; AND CONVICTED IN DISTRICT COURT AND GIVEN ANY ACTIVE PRISON OR JAIL SENTENCE -- PROJECTED ANNUAL STATE TOTALS*

	Offenders Age 21 and Over	Offenders Under Age 21	Total
Superior Court			
Felonies	9,562	3,383	12,945
Misdemeanors	8,607	2,701	11,308
Total	18,169	6,084	24,253
District Court (Misdemeanors only)			
Offenders given any active prison or jail sentence	32,841	7,269	40,110
GRAND TOTALS	51,010	13,353	64,363

*Annual projections are based on actual data collected during November and December, 1987, and January and February, 1988. For an explanation of how these projections were calculated, and for further explanations of the data categories shown on this table see notes 32 to 35, and accompanying text.

Based on these projected annual totals, and those projected for presentence reports, as shown in the following table presentence reports are ordered for only 26% of all persons convicted of felonies in superior court, and 32% of all persons convicted and given some active sentence in district court. In percentage terms, presentence reports are ordered more frequently for offenders under age 21 than 21 and over.

PERCENTAGE OF PERSONS CONVICTED IN SUPERIOR COURT; AND CONVICTED IN DISTRICT COURT AND GIVEN ANY ACTIVE PRISON OR JAIL SENTENCE, FOR WHOM ANY PRESENTENCE REPORT WAS SUBMITTED -- ESTIMATED ANNUAL STATE TOTALS*

	Offenders Age 21 and Over	Offenders Under Age 21	Total
Superior Court			
Felonies	23.8%	32.5%	26.1%
Misdemeanors	3.9%	9.5%	5.3%
Total	14.4%	22.3%	16.4%
District Court (Misdemeanors only)			
Offenders given any active prison or jail sentence	23.4%	68.2%	31.5%
GRAND TOTALS	20.2%	47.3%	25.8%

*The percentages on this table are the projected annual numbers of persons convicted, as shown on the table on page 22, divided by the projected annual numbers of presentence reports submitted, as shown on the table on page 11.

III. USE OF PRESENTENCE REPORTS IN OTHER STATES

Forty-four states responded to a survey conducted by the N.C. AOC for this study. Naturally, there is much diversity. But it is possible to summarize the "majority rules" that emerged from the responses we received (although no single state necessarily follows every majority rule).

Presentence reports may be ordered in any case, and are mandatory for some cases. Reports are prepared only after conviction. Presentation to the judge must include submission of a written report. Defendants have the right to inspect the report before sentence is imposed, and to present evidence in rebuttal.

Presentence reports are to some extent "mandatory" in 26 of the 43 states that responded to this question. In 15 of these 26 "mandatory" states, reports are mandatory for all felonies. Other "mandatory" states are divided between requiring reports for some offenses, for certain youthful offenders, or before a certain sentence may be imposed (e.g., a certain length prison sentence). "Mandatory," however, does not have a fixed meaning. Some states that indicated presentence reports are "mandatory" also indicated that the requirement may be waived by the defendant and/or overridden by the judge.

The table that follows gives aggregate response counts for most survey questions.

SUMMARY OF SURVEY RESPONSES
USE OF PRESENTENCE REPORTS IN THE U.S.*

	# of States	% of States	"N.C." when includes N.C.
States that use presentence reports	45	100%	N.C.
Cases for which reports may be ordered:			
Any criminal case	38	84.4%	N.C.
Only felonies	4	8.9%	
Other	3	6.7%	
Presentence reports are:			
Mandatory for some cases	26	59.1%	
NOT mandatory for any cases	18	40.9%	N.C.
When presentence reports are not mandatory, they must be prepared upon order or request of:			
Judge only	37	86.1%	N.C.
Judge, defendant, or state	5	11.6%	
Judge or defendant	1	2.3%	
Presentence reports are prepared by:			
Probation officer in all cases	43	95.6%	N.C.
Other	2	4.4%	
Presentence reports are prepared:			
After conviction only	28	63.6%	
Before or after conviction	16	36.4%	N.C.
Can a presentence report be prepared before conviction over a defendant's objection?			
Yes	5		
No	7		N.C.
Presentence reports are presented to the judge:			
In writing only	37	82.2%	
Orally or in writing	7	15.6%	N.C.
Other	1	2.2%	

*Surveys were mailed to all State Court Administrative Directors by the N.C. AOC in February, 1988. Forty-four responses were received. North Carolina is included in numbers and percentages above as if North Carolina were the 45th respondent. This table is intended to provide only a general overview, and does not reflect qualifications or elaborations of various responses.

Most states provided copies of such narrative materials as presentence report forms, policy manuals, statutes, or court rules. Prevailing trends seem to include: inclusion of victim impact statements within standardized presentence reports, an emphasis on verification, inclusion of juvenile records, and a slight leaning toward a prose narrative format.

Several states tailor the content and format of presentence reports to multiple uses, including prisoner classification, probation supervision, parole decisions, and statistical data gathering. For example, New Jersey has developed a "building block" approach that uses several special forms at various stages of a criminal proceeding, and beyond; information is collected only once and is built upon (supplemented) by means of additional forms for such information as may be needed as the case progresses.

Finally, however, reference must be made to a historical trend regarding the contents of reports, a trend questioned since at least the 1960s but still evident today: the tendency to provide more information and detail than any person could reasonably be expected to make good use of.[36] One example seemed evident in a ranking sheet used in one state, on which characteristics of the defendant are graded (good/average/poor) along such dimensions as self-confidence, attention span, and "social adequacy."

This might be contrasted with the model used in Connecticut (and adopted in a 1982 study of presentence report formats conducted by the American Justice Institute). This approach focuses on the most recent five years of the defendant's life, and substantially limits reports to five or six areas of information believed most useful to judges. (Connecticut identified these as the offense, criminal history, ties to the community, employment possibilities, medical history relative to substance abuse, victim impact, and prior probation experience.)

IV. PRESENTENCE REPORTS IN THE FEDERAL COURTS

Under Rule 32(c) of the Federal Rules of Criminal Procedure, a presentence investigation and report to the court before imposition of sentence, or granting of probation, is required for each convicted defendant UNLESS:

(a) with permission of the court, the defendant waives a presentence investigation and report; or

(b) the court finds that there is in the record "information sufficient to enable the meaningful exercise of sentencing discretion, and the court explains this finding on the record."

Rule 32(c) goes on to state that a presentence report shall contain:

(1) any prior criminal record of the defendant;

(2) a statement of the circumstances of commission of the offense and circumstances affecting the defendant's behavior;

(3) information concerning any harm, including financial, social, psychological, and physical harm, done to or loss suffered by any victim of the offense; and

(4) any other information that may aid the court in sentencing, including the restitution needs of any victim of the offense.

The Probation Division of the Administrative Office of the United States Courts has issued a monograph which provides extensive information on presentence

investigations and reports, for the guidance of probation officers and for others who have an interest in the subject. (Publication 105, 61 pp., 1984.) The following information is derived from this monograph.

The primary purpose of the presentence report is to aid the court in determining the appropriate sentence. And the report also serves additional purposes: (a) aids probation officers in carrying out supervision of those placed on probation; (b) assists the prison system in the classification of defendants committed to prison and in assigning such defendants to institutional programs; and (c) provides information to the Parole Commission pertinent to consideration of parole for those serving a prison sentence.

If the presentence report is to fulfill its purpose, it must include:

(1) all objective information that is significant to the decision-making process;

(2) assessment of the problems of the defendant and a consideration for the safety of the community; and

(3) a sound recommendation with supporting rationale that follows logically from the probation officer's assessment.

At page 6 of the monograph, there is discussion of what is termed a flexible model for preparing presentence reports known as the core concept--a core of essential

information supplemented by additional pertinent information.

The body of a presentence report is to consist of the following five core categories and subsections:

1. Offense

   Prosecution Version
   Victim Impact Statement
   Defendant's Version

   If applicable, codefendant information and statement of witnesses and complainants may be added.

2. Prior Record

   Juvenile adjudications
   Adult record

3. Personal and Family Data

   Defendant
   Parents and siblings
   Marital
   Education
   Employment
   Health
     Physical
     Mental and emotional
   Military service
   Financial condition
     Assets
     Liabilities

4. Evaluation

   Probation Officer's Assessment
   Parole Guideline Data
   Sentencing Data
   Special Sentencing Provisions

5. Recommendation

Recommendation and Rationale
Voluntary Surrender
(Under voluntary surrender, a sentenced offender is ordered by the court to report to the designated institution on his own, without a U.S. marshal. The presentence report should include a statement of whether or not the defendant would be a good candidate for voluntary surrender.)

The Probation Division monograph goes on to give extensive comments on the details and format of a presentence report, and two examples are given of completed presentence reports on two hypothetical defendants.

Rule 32(a) of the Federal Rules of Criminal Procedure provides that the court's sentence shall be imposed without unreasonable delay. It is noted in the monograph that, generally, the probation officer will have three to four weeks to complete the investigation and write the report.

With the written consent of the defendant filed in district court, a presentence investigation may begin prior to conviction or entry of plea of guilty. Such a report will not be shown to the court or anyone else unless and until the defendant is found guilty or enters a plea of guilty or nolo contendere. (Appendix F(1), Publication 105.)

Before imposing sentence, the court is to permit the defendant and counsel to read the presentence report, exclusive of any recommendation as to sentence, but not to the extent that the report contains diagnostic opinions which if disclosed might seriously disrupt a program of

rehabilitation, or sources of information obtained upon promise of confidentiality; or any other information which, if disclosed, might result in harm to the defendant or other persons.

The court shall afford the defendant and counsel opportunity to comment on the presentence report, and, in the discretion of the court, to introduce testimony or other information relating to any alleged factual inaccuracy.

If the court concludes that the presentence report should not be disclosed, the court shall state orally or in writing a summary of the factual information contained in the report, and give the defendant and counsel an opportunity to comment on such information.

Any material which is disclosed to the defendant and counsel must also be disclosed to the attorney for the government.

Data in the most recent federal report available on probation activity did not give the number of presentence reports prepared for felony offenses and the number prepared for misdemeanor offenses in the federal district courts. The chief deputy probation officer for the federal courts, Eastern District of North Carolina, stated that in his district presentence reports are prepared for virtually all felony convictions and a presentence report is <u>not</u> customarily prepared for misdemeanor convictions.

V. NORTH CAROLINA OPINION SURVEY DATA

Surveys developed by the N.C. AOC were mailed to all superior court judges, district court judges, district attorneys, and public defenders; a random sample of private defense lawyers who are members of the Criminal Justice Section of the N.C. Bar Association; a random sample of DOC probation officers and their unit supervisors; and all case developers and directors of Community Penalties Programs. Response rates ranged from 27% to 88%.[37] Tables in Appendix D detail the response rates for the survey results summarized as follows.

A. WHAT INFORMATION ABOUT A DEFENDANT IS IMPORTANT FOR A JUDGE TO HAVE FOR SENTENCING?

All judges and lawyers were given a list of 13 general categories of information and were asked to indicate how important they thought each category to be for sentencing by assigning a number from zero (not at all important) to five (extremely important). Table 1 in Appendix D gives the average score and relative rank of importance assigned to each category of information by each respondent group.

All groups except public defenders identified the defendant's adult criminal record as the most important category of information for sentencing.

With small differences in average scores and in the relative order of importance, both superior and district court judges gave their next highest average scores to the following: the investigating officer's version of the

crime, victim impact information, complainant's version of the crime, employment history, physical and mental health, and information on alternatives to prison.

Considerable differences emerged between the responses of judges, on the one hand, and both district attorneys and defense counsel (public and private) on the other. District attorneys did substantially agree with judges on the four most important categories of information for sentencing, but gave all other categories relatively low average scores. Defense counsel gave more importance to such information as defendant's education and family history than did judges or district attorneys. These differences are predictable in view of the different adversarial perspectives the lawyer groups likely bring to the subject. As will be seen, however, judges rely heavily on prosecutors and defense counsel to provide information for sentencing. In that light, the different views regarding what information is most important for sentencing take on greater importance.

B. WHAT INFORMATION ABOUT A DEFENDANT IS USUALLY BEFORE JUDGES FOR SENTENCING?

Judges were asked whether the same categories of information are "usually" before them for sentencing (regardless of the source of the information). Response rates are shown in Table 2, Appendix D.

Most judges (more than 50%) report that the categories of information they (as a group) regard as most important

to sentencing are usually before them. But another side warrants examination. District court judges identified the defendant's conviction record as the most important category of information for sentencing. But 11% of district court judges reported that this information is not usually before them. Superior court judges gave victim impact information their third highest mean score for how important the information is for sentencing. But 46% of the superior court judges indicated that this information is not usually before them.

These data, of course, do not identify what information may be relevant to, or missing for, sentencing in any particular case. Nor does this question address how needed information might be provided to judges. The question merely sought to ascertain whether information judges consider most important for sentencing is usually before them. For nearly every such category of information, a considerable percentage of judges report that the information is not usually before them.[38]

C. DO JUDGES CONSIDER PRESENTENCE REPORTS FROM PROBATION OFFICERS TO BE AN IMPORTANT SOURCE OF THE INFORMATION THEY USUALLY RECEIVE?

Judges were asked whether presentence reports from probation officers have been an important, even if not the only, source of the information they usually have before them. Responses rates are given in Table 3, Appendix D.

With reference to the same 13 general categories of information, only between 8% and 43% of superior court judges, and between 9% and 52% of district court judges indicated that presentence reports are an important source of the information they usually receive.

These data seem to demonstrate that judges rely heavily on other sources of information for sentencing. Several judges commented that much information desired for sentencing can be provided by defendant and defendant's attorney, and by the district attorney.

These data should <u>not</u> be interpreted as necessarily an indication of how favorably judges regard the adequacy or actual or potential utility of presentence reports in general. Some judges did comment that presentence reports are rarely needed. But some narrative comments were to the effect that presentence reports would be ordered more often if judges believed that probation units had sufficient personnel. Clearly, a positive opinion on the potential importance of presentence reports could nonetheless be coupled with the response that presentence reports have not been an important source of information.

D. <u>"IF THE GENERAL ASSEMBLY WERE TO DECIDE THAT PRESENTENCE REPORTS FROM PROBATION OFFICERS SHOULD BE MANDATORY (AND ASSUMING THAT SUFFICIENT PERSONNEL RESOURCE WOULD BE PROVIDED TO DO WHATEVER WAS NECESSARY), FOR WHICH CASES WOULD YOU SUGGEST PRESENTENCE REPORTS BE MANDATORY</u>?"

The above quoted question was asked of all judges, lawyers, and probation officers. In various narrative

comments throughout the survey, several respondents in each group volunteered the opinion (some quite emphatically) that presentence reports should never be mandatory. But this question was deliberately phrased in the hypothetical, and most respondents answered it.

The question listed several specific categories of cases, some that could be selected by a check mark, and some that needed a substantive response (e.g., "some felonies (please list)"). Table 4 in Appendix D gives the frequencies of responses to each case category.

The only case category that more than half (69%) of all respondents selected for mandatory presentence reporting was "all felonies except capital cases." This case category was selected by 50% of superior and 67% of district court judges; 32% of district attorneys and 82% of defense lawyers (public and private combined); and by 71% of probation officers.

No other case category was indicated by more than 50% of any respondent group. Two case categories received close to a 50% response: "when defendant is a first offender" was indicated by 46% of superior court judges (but only 30% of all respondents); and some age was given for the category that read "when defendant is under a certain age" by between 34% and 47% of the various respondent groups (37% of all respondents).

Where some substantive response was required (such as for "under a certain age") there was much diversity.

Consequently, relatively few individual respondents gave the same response. The most common age given for making presentence reports mandatory when defendant is under a certain age was 21. Specific crime types mentioned for both felonies and misdemeanors favored violent crimes, and sex and drug offenses. In general, however, few patterns emerged clearly.

E. RESPONDENTS' VIEWS ON WHETHER PRESENTENCE REPORTS FROM PROBATION OFFICERS HAVE AN IMPACT ON WHETHER OR NOT A DEFENDANT RECEIVES AN ACTIVE SENTENCE

Majorities of both superior and district court judges reported that presentence reports have "an impact" on whether or not they impose an active sentence (prison or jail); 68% of superior court judges and 84% of district court judges so reported. Response rates for all groups are given in Table 5, Appendix D.

Respondents who indicated that presentence reports do have such impact were asked to answer the open-ended follow-up question: what impact? A few respondents (in each group) indicated, in essence, that presentence reports tend to provide the basis for some alternative to an active sentence. Conversely, a few respondents (in each group) indicated, in essence, that reports tend to reveal the need for an active sentence. But overwhelmingly, the impact assigned to presentence reports was general rather than specific. According to the predominant opinion expressed

here no generalization is possible concerning the direction of that impact.

As some respondents suggested, judges may order presentence reports more often in "close cases"; these may tend to fall equally often for or against an active sentence. However, it may be that presentence reports have some specific impact on sentencing behavior, but one not readily evident to those closely involved in the process and, therefore, not discoverable through an opinion survey. Individual case data and statistical controls are certainly necessary before any conclusions can be advanced regarding the impact presentence reports have on sentencing. But for the limited purpose for which this question was intended, some useful subjective information may be derived. Presentence reports are <u>believed</u> to impact sentencing in a positive way, but only in the way any informational base impacts decisions. Many respondents, particularly probation officers, expressed the view that the improved informational base leads to more appropriate, more fair, or less disparate decisions. But presentence reports are not <u>believed</u> to be a factor that increases or decreases the frequency of active prison or jail sentences.

F. <u>SUGGESTIONS FOR REVISION TO THE TYPES AND CONTENTS OF PRESENTENCE REPORTS PREPARED BY DOC</u>

Respondents were asked to list any changes they would recommend to the <u>types</u> of presentence reports; at present, there are oral and three versions of written presentence

investigations, plus written reports for presentence diagnostic studies. Two other questions addressed contents, asking respondents to list categories of information that should be given in addition to present contents, plus information that is being given, but that could be omitted. (While the various recommendations for revision may have merit, it is noted that relatively few respondents offered specific recommendations.)

As to changes in the types of presentence reports, the most prevalent suggestions were for a more narrative format and/or for having only written reports.

As to information that could be given in addition, the following items or categories of information were most frequently listed: victim impact information, including information relevant to restitution, details of or screening for substance abuse, present and prior probation experience, and any special mental health problems and prior treatments.

The most common suggestion for information that could be omitted entirely was religious preference. Several respondents suggested omitting information that is routinely provided from other sources, such as the defendant's and the State's version of the crime. Most suggestions for omission of information, however, can be categorized under a heading of "less detail," specifically, for example, about defendant's extended family, financial

information not relevant to restitution, and extensive detail on past employments.

Several probation officers recommended use of a formal order form a judge could use to order a presentence report, on which the judge could check off or list categories or items of information that should be included in the report.

G. WHEN SHOULD PRESENTENCE REPORTS BE PREPARED?

More than 50% of each respondent group expressed approval of current law, under which presentence reports are prepared only after conviction, unless defendant moves for an earlier investigation.

Approximately one third of the judges indicated preference for presentence reports to be prepared before or after conviction, in the judge's sole discretion, with or without a motion by the defendant. This alternative was favored by 40% of superior and 33% of district court judges. (Further details are given in Table 7, Appendix D.) Some commentary emphasized that preparation of presentence reports before conviction would be particularly important if presentence reports were to become mandatory, in order to avoid delay.

Delay between conviction and sentencing, when a presentence report is ordered after conviction, may be especially problematic if the superior court judge who presided over determination of guilt is rotated to a different county or district while the investigation is

conducted. Superior court judges, district attorneys, and defense counsel were asked what (if any) statutory provisions they would recommend, in addition to those set forth in present law,[39] to facilitate use of presentence reports in circumstances where ordering a report involves delay between conviction and sentencing.

Very few specific recommendations for statutory change were made. Responses to this question predominantly stressed the desirability for the sentencing judge to be the same judge who presided over determination of guilt.

H. SURVEY QUESTIONS RELATING TO COMMUNITY PENALTIES PROGRAMS

All judges, lawyers, and Community Penalties Program (CPP) personnel were asked a series of questions about community penalty plans, most of which related to the same issues that were addressed for presentence reports from probation officers. Tables 8 through 12 in Appendix D detail the results summarized here. Only the views of respondents who have had experience with Community Penalties Programs are reported here; such respondents were 76% (37 in number) of the superior court judges, 17% (12) of the district court judges, 53% (10) of the district attorneys, and 34% (28) of the defense lawyers.

1. Should Judges Be Authorized to Order Preparation of a Community Penalty Plan?

Substantial majorities (between 64% and 89%) of all respondent groups except district attorneys believe that

judges should be so authorized. (Only two of the ten district attorneys with experience with community penalty plans believe judges should be so authorized.)

2. Should Community Penalty Plans Be Mandatory for Any Category of Case of Offender?

Majorities of all respondent groups (and 100% of the district attorney respondents) do not believe that community penalty plans should be mandatory for any case. The highest percentage for any group that did favor mandatory community penalty plans was 40%, among CPP personnel.

Among those respondents who favor mandatory community penalty plans, there was no consensus as regards the offenses or offenders that should be subject to a mandatory requirement. The most common qualification was for nonviolent offenders.

These results must be interpreted in a narrow context. Present law already directs Programs to target nonviolent offenders who will likely receive an active prison sentence if convicted. In practical terms, the statute directs the Programs to prepare community penalty plans for offenders who are good candidates to be diverted from prison. As noted by some respondents, it would be difficult, if possible at all, to categorize in a statute or otherwise those offenders who are conclusively suitable for diversion from prison in terms of a few specific offenses and/or a few specific characteristics of an offender.

Thus, the prevailing view that community penalty plans should not be mandatory is likely a reflection of the view that analysis of individual offenders is the only adequate way to determine an offender's suitability for diversion from prison.

3. Respondents' Views on the Impact Community Penalty Plans Have on Whether or Not a Judge Imposes an Active Sentence

Research by the Institute of Government has found that Community Penalties Programs in North Carolina reduce active prison terms.[40] An "impact" question was nonetheless included in the AOC survey.

Substantial majorities of all respondent groups (between 73% and 100%) believe that community penalty plans impact the judge's decision regarding whether to give an active sentence. Unlike the impact reported for presentence reports prepared by probation officers, which was a general impact not believed to increase or decrease the frequency of active sentences, most respondents in each group believe that community penalty plans result in less frequent imposition of or shorter active prison terms.

Dissenting comments from some judges and district attorneys raised the issue of credibility. In essence, these respondents reported that community penalty plans have been unrealistically biased in favor of the defendant and, therefore, not regarded as offering a meaningfully informed alternative to incarceration.

4. Respondents' Recommendations for the Contents of Community Penalty Plans

Few respondents offered specific suggestions for revision to the contents or format of community penalty plans. One CPP case developer suggested the need for a more standardized form to be used by all Programs, and another suggested the need for some procedure by which judges could communicate their desire for a plan to cover some particular area of information.

Among some judges and district attorneys, there was a desire to see more balanced information, i.e., inclusion of information that may be unfavorable to the defendant, such as victim impact information, more accurate and detailed criminal histories, and the state's version of the crime.

VI. LEGAL ISSUES AND RESTRICTIONS REGARDING CONTENTS, PREPARATION AND USE OF PRESENTENCE REPORTS

Judicial discretion is central to the law of sentencing. Since presentence reports are intended to inform judicial discretion, it is no surprise that the cases encourage use of presentence reports and vest the judge with broad discretion in their use.[41]

The legal issues and "restrictions" that follow should be considered in that context. Many of the issues addressed in this section, and in this study, raise the question of what balance is desirable between legislative prerogative to narrow or channel judicial discretion, and the historically broad scope of judicial discretion in sentencing.

A. HEARSAY IN PRESENTENCE REPORTS

U.S. and North Carolina cases, and the General Statutes, are clear that presentence reports may, and inevitably will, contain hearsay. The U.S. Supreme Court has stated:

> ". . . a judge may appropriately conduct a (presentence) inquiry broad in scope, largely unlimited either as to the kind of information he may consider, or the source from which it may come."[42]

By statute in North Carolina, formal rules of evidence do not apply at the sentencing hearing.[43] And, as stated in a concurring opinion in one North Carolina case, the legal issue is:

> "not whether the trial judge improperly relied on inadmissible hearsay, but whether . . . the sentencing hearing was 'fair and just (and provided the defendant) with full opportunity to controvert hearsay and other representations in aggravation of punishment.'"[44]

North Carolina case dicta has instructed judges to disregard "(u)nsolicited whispered representations and rank hearsay."[45] But no North Carolina case was located in which error was found based on hearsay in a presentence report.

The line between what information is and is not reliable enough for the judge to consider in sentencing is largely (but not exclusively) defined by the imprecise boundaries of judicial discretion. But broad judicial discretion in sentencing has been criticized in the context of hearsay in presentence reports.[46] Between the extremes of strict application of formal rules of evidence, and unbridled judicial discretion, are the issues of verification and the defendant's opportunity to rebut. These issues are considered next under the heading of due process.

B. DUE PROCESS AND THE ACCURACY OF INFORMATION, VERIFICATION, AND THE DEFENDANT'S OPPORTUNITY TO REBUT

Although the rules of evidence do not apply to information that may be received and considered in sentencing, due process has been held to impose some limits on the quality of information on which a sentence is based.

Use in sentencing of "misinformation of a Constitutional magnitude" violates due process.[47] But due process requires reversal of a sentence only if based on mistakes of fact that have "independent Constitutional significance."[48] Although use in sentencing of inaccurate information alone does not appear to violate due process, due process has been found to require procedural safeguards for the accuracy of sentencing information.

Specifically, first, is the defendant's opportunity to rebut information relied on by the judge for sentencing. This right is established in North Carolina cases and current North Carolina statutes, and has been found to arise as a matter of due process in some U.S. decisions.[49]

Second, is the requirement that the person who prepares a presentence report verify all material information by obtaining first-hand accounts and documentation. At present, North Carolina statutory law does not require such verification.[50] But such a requirement has been imposed as a matter of due process in the circumstances of some federal cases.[51] And, verification is strongly urged by the American Bar Association (ABA) in its Standards pertaining to presentence reports.[52] The ABA suggests that the person who prepares a presentence report be required to verify all material information contained in the report, and that the court should not consider any material information

challenged by the defendant unless the court finds that the verification was adequate.

C. FAIR SENTENCING ACT (FSA)

North Carolina courts have reversed numerous sentences found to have been based on factual circumstances that cannot be used to aggravate a sentence under the FSA. This could suggest that the FSA imposes restrictions on what factual circumstances may be set forth in a presentence report.

The FSA, however, should not be so construed. The FSA applies to determination of the length of a felony sentence.[53] The Act does not restrict a trial judge's discretion in such areas as whether to impose an active or a suspended sentence, impose consecutive or concurrent terms, or fix conditions and incidents of probation.

Thus, information in a presentence report may relate to matters that cannot be used to aggravate or mitigate the length of a felony sentence, but may be used, and may be important for, the exercise of overall sentencing discretion. For example, the North Carolina Supreme Court has ruled that it is error to aggravate a sentence under the FSA based on the unavailability of alternatives to incarceration or because of certain mental or emotional disorders.[54] But these are clearly relevant matters for presentence reporting.

Stated most broadly, the permissible contents of a presentence report are bounded not by what information may or may not be relevant to any one aspect of sentencing authority (such as the length of sentence under the FSA), but rather by reference to what information may be relevant to any of the diverse areas of sentencing discretion. The broad scope of judicial discretion in present law is perhaps best exemplified by the virtually unfettered discretion to impose an active sentence or suspend the sentence.[55] As a practical matter, such broad discretion implies virtually no legal restriction on what a presentence report may contain so long, of course, as the information is accurate (possibly verified) and relates to the character, conduct, background, and capabilities of the defendant.

D. USE OF VICTIM IMPACT STATEMENTS

The U.S. Supreme Court has held use of victim impact statements in capital cases impermissible.[56] This narrowly written opinion seems clearly limited to capital cases.

Consideration of victim impact statements in noncapital cases has been approved by the N.C. Court of Appeals.[57] As with other information received by the court relating to punishment, it appears that information relating to impact on the victim must be made known to the defendant and the defendant must be given the opportunity to explain or refute it.[58]

North Carolina statutes specifically provide for preparation of a victim impact statement in felony cases. Subject to available resources, the prosecutorial, judicial, law enforcement, and correctional systems are directed to cooperatively assure that crime victims (and witnesses) are provided "fair treatment," which includes preparation of a victim impact statement. Victim and witness assistant positions within each District Attorney's office are given responsibility to coordinate the efforts of the law enforcement and judicial systems in providing such fair treatment.[59]

The statute does not specify any format or content for victim impact statements, or any procedures to be followed in their preparation or use. But, as directed by statute, the Conference of District Attorneys has undertaken training of victim and witness assistants and supervision of the program. Although the Fair Treatment Act has been in effect only since October, 1986, statewide an estimated 1,500 to 2,000 victim impact statements are being distributed each month, before the defendant is convicted. A complete report on the implementation and effectiveness of the Fair Treatment Act has been submitted to the Joint Legislative Commission on Governmental Operations.[60]

E. USE OF PRIOR CONVICTIONS OBTAINED IN VIOLATION OF THE SIXTH AMENDMENT RIGHT TO COUNSEL; PROOF OF PRIOR CONVICTIONS

The U.S. Supreme Court has ruled that convictions obtained in violation of the Sixth Amendment right to counsel are invalid, and may not be considered in sentencing.[61]

North Carolina statutes give defendant the right to suppress evidence of an invalid prior conviction at the sentencing hearing, but the right is waived if not timely raised.[62]

By statute, prior conviction may be proven by stipulation of the parties or by the original or certified copy of the court record.[63] Cases have found satisfactory proof of prior convictions from the defendant's own statements and from a detective's testimony, but have held a prosecutor's (nontestimonial) statement insufficient proof.[64]

Although no North Carolina case has ruled on the evidentiary status to be given prior convictions listed in a presentence report, it seems clear that the presentence report would constitute competent proof, and the burden would be on the defendant to raise appropriate objection. It seems equally clear, however, that special care and precaution should be taken in preparation and verification of presentence reports as regards prior convictions, and that the better practice would be to include certified copies of relevant court records.

F. INCLUSION OF JUVENILE DELINQUENCY RECORD IN PRESENTENCE REPORTS

The DOC, Division of Adult Probation and Parole, advises that they construe present law as not permitting consideration of a juvenile delinquency record in sentencing and, therefore, this information is not given in presentence reports. There appears to be some ambiguity in North Carolina law.

A juvenile under age sixteen who commits a crime is subject to the North Carolina Juvenile Code. The juvenile may be adjudicated "delinquent" (as opposed to guilty of a criminal offense), and then be subject to rehabilitative (as opposed to punitive) dispositions that favor family and community-based supervision and treatment.[65]

A juvenile's court record may be accessed only by the juvenile, parent, guardian, other authorized representative, or by order of the district court judge.[66] By statute, an adjudication of delinquency is not a "conviction" for a criminal offense, nor does it result in loss of any rights of citizenship.[67] This seems to evidence a legislative intent to facilitate a delinquent juvenile's rehabilitation by sheltering the juvenile from the shadow of a criminal history. By this interpretation of legislative intent, a delinquency record would be irrelevant as a matter of policy to sentencing that person for subsequent criminal violations. The judge's authority to order a probation officer to investigate "all

circumstances relevant to sentencing" would not extend to an investigation of the juvenile record.

But there are contrary indications of legislative intent. After attaining age 16, a person who had been adjudicated delinquent may petition the court to have the juvenile record expunged, unless the person has subsequently been adjudicated delinquent or convicted of a crime.[68] This seems to evidence a legislative intent to preserve a juvenile record when circumstances indicate a proclivity to commit further offenses. Similarly, even after a delinquency record is expunged, the person adjudicated delinquent may be compelled to testify with regard to the adjudication (typically, on cross-examination to impeach the person's credibility as a witness).[69] And finally, the statute that lists the appropriate subjects for a presentence diagnostic study directs DOC to inquire "into such matters as the defendant's previous delinquency or criminal experience . . . ."[70]

These issues were raised in recommendations of the Governor's Crime Commission to the 1983 General Assembly. The Commission recommended statutory amendments to require a probation officer to investigate a defendant's juvenile record, and include the delinquency record in the presentence report if the defendant had been adjudicated delinquent for commission of a Class A, B, or C felony, or had been adjudicated delinquent more than once.[71]

G. USE OF PRESENTENCE REPORTS BY THE DIVISION OF PRISONS AFTER SENTENCING

For classification of prisoners and related supervisory purposes, the Department of Correction gathers extensive diagnostic and social history information about offenders committed to the Department.[72] For those offenders for whom a presentence report had been prepared, much of this information will have been gathered by the probation officer and set forth in any written presentence report.

North Carolina statutes clearly reveal a policy in favor of record sharing or, conversely, against duplication of effort, within the DOC.[73] Although information and data about a defendant obtained by a probation officer is privileged, the Secretary of Correction has authority to authorize its disclosure.[74]

However, a statute that addresses the confidentiality rights of a defendant restricts access to the presentence report itself to the defendant, defendant's attorney, the prosecutor, and the court.[75] The Division of Adult Probation and Parole, therefore, concludes that it is prohibited from passing the presentence report itself on to the Division of Prisons.

VII. ANALYSIS OF ISSUES

Presentence reports in North Carolina are ordered for only some 16% of all superior court convictions, and 32% of district court convictions that result in an active sentence. Reports are overwhelmingly oral (77%). While some judges report that most of the sentencing information they desire is available from other sources, a considerable percentage of judges report that information considered very important for sentencing is not usually before them. Some judges commented that they would order presentence reports more often if they felt that probation units had sufficient resources, and the prevailing view among all groups of survey respondents appears to be that presentence reports have a positive impact on sentencing.

In all, our findings indicate reason to provide judges with improved information for sentencing.

A. THE IMPORTANCE OF ADEQUATE RESOURCES

The ABA describes adequate resources as an indispensable corollary to providing good, reliable presentence reports. The ABA goes so far as to suggest that incomplete or unverified information can be worse than none at all, and that "to fail to fund an adequate presentence investigation is to perpetuate a sentencing process incapable of achieving either equity or individualization."[76]

Probation officers in North Carolina are responsible for supervision of probationers and for preparation of presentence reports. This study projects preparation of some 16,600 presentence reports annually. As of March 31, 1988, 66,088 offenders were on probation, at various levels of supervision (from intensive to "deferred"). These responsibilities are currently assigned to 543 probation officers.[77]

Consideration might be given, if adequate resources are available, to assigning some probation officers exclusively to presentence investigation and reporting functions, with other probation officers having only probation supervision duties. Some defense attorneys expressed concern that probation officers lean away from recommending probation, because of their heavy supervision caseloads. And some judges mentioned these supervision caseloads as a factor militating against use of presentence reports. Separation of presentence report and supervision duties could reduce the perception that presentence reporting detracts from supervision. While a workload study of DOC probation departments is beyond the scope of this study, the need for adequate resources and the need for creative management of these resources, however obvious, deserve emphasis.

B. SHOULD PRESENTENCE REPORTS FROM PROBATION OFFICERS BE "MANDATORY," AND IF SO, FOR WHICH CASES?

As a matter of interpretation from the comments of several judges and other survey respondents, the prevailing sentiment seems clearly against any mandatory presentence reporting. Of course, the General Assembly may conclude (and in analogous areas of law, has concluded) that judges ought to consider certain information in making decisions, regardless of whether judges would choose to do so as a matter of discretion.

Some form of "mandatory" presentence reporting is the majority rule among the states, is the rule in the federal courts, and is urged by the ABA and other organizations that have promulgated Standards or "Model Codes".[78] The principal arguments for a mandatory requirement relate to the improved quality of discretionary sentencing decisions that result from improved information, fairness to individual defendants, and minimizing disparity in the sentencing of similarly situated defendants. In general, it is believed that good objective information (not solely provided by parties to the case) will lead to more appropriate and just sentencing.[79] AOC survey data suggest that most judges and others believe presentence reports are beneficial to judges for sentencing.

These arguments and considerations seem to justify the conclusion that presentence reports should be put to greater use in North Carolina. Nonetheless, the need for "mandatory" presentence reporting does not seem adequately

proven, at the very least, without considerable qualification of the term "mandatory."

As stated in the Introduction to this report, there is limited empirical evidence of the specific impact that presentence reports have on sentencing. In one study, judges gave different interpretations to the same information contained in the same presentence report; as do all persons, judges process (or disregard) information in a manner consistent with opinions and philosophies they already hold.[80] Research has found that judges are influenced primarily by the nature of the offense committed and the defendant's criminal history.[81]

If it could be demonstrated that presentence reports do accomplish all or even much of what is often claimed for them, then it would be difficult to argue against the need to have them prepared for nearly every case. But certainly, not just <u>any</u> presentence report could accomplish the best results. Before a sweeping mandatory requirement can be justified, it seems that improvements in the format and content of reports should already be established. And in the absence of empirical proof that "good" reports do substantially lead to improved sentencing, it seems difficult to justify a statewide, unqualified mandatory requirement.

In some states, and in some model codes, "mandatory" means just that: a strict requirement that cannot be waived by the defendant or overridden by the judge.[82] In

other states, and as recommended by the ABA, the "mandatory" requirement can be waived by the defendant if the judge finds that adequate information for sentencing is already available.[83] The least strict definition of "mandatory," as in the federal rule, allows the requirement to be waived by the defendant if the judge approves, or overridden by the judge on a finding of sufficient available information, even without waiver by defendant.[84]

Discretionary judicial control over sentencing has been the historic rule in North Carolina. While this does not prove that it is the correct rule, there should be some compelling evidence to justify major revision. On balance of all considerations outlined above, including the apparent absence of widespread support, there does not seem to be sufficient reason for an immediate statewide mandatory requirement. There may, however, be sufficient reason to consider implementation of mandatory presentence reporting in some few districts or counties, in the context of a pilot study. Such a study may provide the crucial but missing empirical links regarding the actual effects of presentence reports, and any differences that may depend upon whether reports are mandatory or discretionary.

Should mandatory presentence reporting be considered on a statewide basis, the same considerations seem to dictate that only a qualified requirement apply. Specifically, with one possible exception (applicable to young felons, and detailed later), this would mean a

requirement that could be waived by the defendant with the judge's permission, or overridden by the judge with a finding that sufficient information is available for sentencing without a presentence report.

Focus turns next to specific case-types for which a presentence report might be presumptively required ("mandatory").

1. Capital Cases

In capital cases a jury decides whether the death penalty should be imposed; if the jury does not recommend death, the judge must impose life imprisonment.[85] It seems that the jury should, and as a practical matter counsel will assure that the jury does, have the benefit of a full hearing, with firsthand testimony. Although the judge may exercise extensive discretion for sentencing of noncapital offenses tried in the same proceeding, the judge will have had the benefit of the same sentencing hearing.

The central role of the jury, the judge's limited discretion, the likelihood of a detailed sentencing hearing, and the policy of encouraging such a hearing in capital cases seem in combination to suggest that presentence reports should not be mandatory in capital cases.

2. Misdemeanors in Superior and District Court

There appears to be only one state, and no model code, that requires presentence reports for misdemeanors as

such.[86] (Some mandatory requirements apply to characteristics of the defendant, such as age, for misdemeanors and felonies.) Certainly, this is in part a concession to the fact of inevitably limited resources in view of large misdemeanor caseloads (1,016,289 misdemeanors were disposed of in North Carolina superior and district courts during 1986-87). It also suggests that the more severe the possible punishment, and the greater the stakes for the defendant and the public, the more care and scrutiny are needed.

It seems relevant that most presentence reports presently ordered in North Carolina are for misdemeanors in district court. AOC survey data suggest that misdemeanors are viewed as the least appropriate candidate for mandatory presentence reporting.

On balance, there appears to be no sufficient need or justification to require presentence reports for misdemeanors. No distinction is made on this issue as between superior and district court. Although misdemeanors appealed to superior court may represent the most serious misdemeanors, it seems difficult to identify adequate reason for why a superior court judge must have the benefit of a presentence report for the same offense and offender with respect to which a district court judge has discretion.

3. Noncapital Felonies

Where presentence reports are mandatory, or recommended to be so in model codes, the requirement most commonly applies to felonies.[87] This prevailing rule is based on the desire to apply the most exacting scrutiny to offenders who represent the most serious threats to society, who constitute the bulk of the prison population, and who face the most stringent restraints on their liberty.

At present, a presentence report is ordered for only some 26% of felony convictions in North Carolina. Noncapital felonies represent the only case category that more than half of all survey respondents recommended for mandatory presentence reporting should the General Assembly decide to impose a mandatory requirement. And, the Fair Sentencing Act, applicable only to felony sentencing, focuses sentencing discretion on specific factual circumstances.

The arguments in favor of mandatory presentence reporting seem clearly to have their strongest force in North Carolina in the context of felonies. However, judicial discretion for the most serious noncapital felonies is curtailed (to life sentence for Class A and B felonies, and to other specific sentences for some individual crimes).[88] When a mandatory sentence is imposed by statute, an exception to any mandatory presentence reporting requirement would seem justified.

4. Offenders Under a Certain Age

A mandatory requirement based on the age of the offender exists in some jurisdictions and is urged by the ABA and other model codes.[89] Since a mandatory requirement applicable to all felonies would encompass felons of all ages, this discussion focuses primarily on misdemeanors. Moreover, since it seems that clear no special need exists for a presentence report in the great bulk of misdemeanor cases (e.g., most motor vehicle violations), attention here focuses on age in combination with the seriousness of the offense.

Arguments for requiring the most exacting scrutiny for the most serious offenses are particularly forceful with respect to the most sensitive offenders. Although there was no clear consensus on the specific age below which a mandatory presentence reporting requirement might apply, this basis for a mandatory requirement was favored by more survey respondents than was any other case-type except felonies. Other data also indicate that judges view presentence reports as particularly important for youthful offenders. Based on projected annual totals, presentence reports are ordered for some 47% of offenders under 21, but only 20% of offenders over 21; offenders under 21 account for only some 21% of convictions, but 38% of all presentence reports ordered. AOC data project that some 7,270 misdemeanor offenders under age 21 are given some active prison or jail sentence annually in district court.

And, judges must exercise special discretion regarding whether or not to sentence an offender under age 21 who receives an active sentence as a "committed youthful offender."[90]

On balance, the cases for which a mandatory requirement seems to deserve consideration, if at all, would include youthful offenders charged with the most serious misdemeanors. The most relevant age of majority to this issue would seem to be 21, the age below which judges must consider sentencing as a committed youthful offender. And, offenses punishable by more than six months (and, therefore, in the state prison system) would seem to represent the most serious misdemeanors.

5. The Meaning of "Mandatory" for Certain Young Offenders

It was mentioned that one exception could be considered to the qualified nature of a "mandatory" requirement. Such an exception, by operation of which the presentence report could not be waived by the defendant or overridden by the judge, may be appropriate for the narrow category of superior court felons age 14 or older and under 16. Pursuant to the North Carolina Juvenile Code, such an offender may be transferred to superior court for trial as an adult.[91] If that same offender had been adjudicated under the Juvenile Code, a "predisposition report" would have been mandatory before the dispositional hearing.[92] It should be recalled that a strictly mandatory requirement,

one the judge could not overcome, was questioned above largely because of doubts about the actual impact, if any, presentence reports have on sentencing. If there is any category of offender for whom this doubt might be resolved in favor of a strictly mandatory requirement, that category would seem to be felony offenders age 14 or 15.

6. Disposition Method: Plea Bargains as to Sentence

Last considered under the issue of mandatory presentence reporting is the possibility of an exception to all mandatory requirements in cases where the judge approves a plea bargain arrangement that includes an agreement between the defendant and the State as to sentence.

The ABA opposes exceptions to presentence reporting requirements in plea bargain situations on the basis that this transfers discretion from the judge to the parties.[93] But deference is allowed to such sentencing in current North Carolina law; by statute, the presumptive terms of the FSA do not apply to sentencing pursuant to such an agreement.[94]

The extent to which plea bargaining should be encouraged is beyond the scope of this study. For so long as sentencing agreements between the State and the defendant are afforded special weight in North Carolina law, it seems inconsistent to impose a mandatory presentence reporting requirement. If any such requirement applied when the parties have reached an agreement as to

sentence, a judge would be required to consider a presentence report or find that sufficient information is already available for sentencing; such a finding seems redundant when the judge has decided to approve the parties' agreement. (As with any case, of course, the judge would always have discretion to order a presentence report.)

C. "MANDATORY" COMMUNITY PENALTY PLANS, AND EXPANSION OF COMMUNITY PENALTIES PROGRAMS

The Community Penalties Act is intended to provide judges with a community-based punishment option for offenders who otherwise would be sent to prison. To accomplish this, the Act directs the Programs to "target" such offenders for preparation of community penalty plans. The word "target" seems clearly to stop short of making a community penalty plan "mandatory."

A crucial distinction must be made between what the Act already seems to require by the term "target," as opposed to what seems implicit in the word "mandatory." The distinction is between requiring an investigation of an eligible offender (to "target"), and making preparation and submission of a community penalty plan mandatory.

Submission of a proposal for an alternative to prison should not be "mandatory." As previously discussed, majorities of all respondent groups within the AOC survey are opposed to "mandatory" community penalty plans; this seems to reflect the view that several factors about each

individual offender must be analyzed in order to conclude that a community-based sentence is appropriate. Such factors would include the defendant's level of cooperation and commitment, and, most obviously, the availability of resources suitable for a particular defendant's treatment and supervision needs.

The law should not require a judge to be presented with an option for an alternative to prison without regard to some initial, individualized determination of whether or not the particular offender should be diverted from prison. Put otherwise, while an investigation might appropriately be mandatory for certain offenders, the results or conclusions of the investigation (that a nonprison alternative should be submitted) should not be mandatory.

To the extent there is any ambiguity in the duties set forth for Community Penalties Programs in current law (G.S. 143B-503), there would seem to be no objection to a specification along the lines of the following: to the extent of available resources, DCCPS Programs must identify and investigate ("target") all nonviolent misdemeanants and nonviolent Class H, I, and J felons, and prepare community penalty plans for all such offenders who, after investigation and analysis, are found to be appropriate candidates for consideration by the judge of a community-based alternative to prison.

The success and apparent cost-effectiveness of Community Penalties Programs (see Sections I.C and I.D)

seem to justify expansion to all areas of the state where to do so would be cost-effective in terms of the numbers of convicted offenders who might be diverted from prison. Data presented in this study indicate that existing Programs are not reaching all eligible offenders; expansion of existing Programs also seems justified, again, to the extent it would be cost-effective to do so.

D. WHEN, AS TO TIME (BEFORE OR AFTER CONVICTION), SHOULD PRESENTENCE REPORTS FROM PROBATION OFFICERS BE PREPARED?

Present North Carolina law is in accord with the rule urged by the ABA; presentence investigations may be conducted only after conviction unless the defendant consents to (moves for) an earlier investigation.[95] A slight majority (51%) of the superior court judges who responded to the AOC survey favor current law over the most obvious alternative, discretion to order an investigation before conviction without the defendant's consent.

One advantage to conducting an investigation before conviction requires careful attention: avoiding delay between conviction and sentencing. In superior court, delay after conviction could result in the judge who presided over determination of guilt being rotated to a different district or county while the investigation is conducted.

Investigations before conviction without the defendant's consent are allowed in Massachusetts, where

judges also "ride circuit," and in four other states that responded to the AOC survey. Early investigation (with the defendant's consent) is allowed under the Federal Rule, and the advantage of avoiding postconviction delay has been described as particularly important in districts where judges sit in several locations.[96] Community penalty plans are prepared before conviction.

When a presentence report is ordered, North Carolina judges have discretion to continue the sentencing hearing, or order the hearing held later in another district or county, and case law has upheld sentencing by a different judge than the judge who presided over determination of guilt when a presentence report is ordered.[97] But, several survey respondents expressed the view that it is very important to avoid delay, because the judge who presides over determination of guilt should also impose the sentence.

Thus, a dilemma is presented. If presentence reports are to be encouraged or required in superior court, while preserving same-judge sentencing in the vast majority of cases, then the issue of delay must be confronted.

In balancing these priorities, the empirical support for the importance of presentence reports does not seem strong enough to justify promoting or requiring their use regardless of delay and its consequences. On the other hand, the goal of promoting or requiring presentence reports does seem sufficiently strong to justify

consideration of some carefully tailored mechanism to address the issue of postconviction delay in superior court.

Consideration should be given to authorizing superior court judges to order a presentence investigation before conviction, without a motion by or consent of defendant, provided that disclosure of the report to the judge, jury, or State be prohibited until after conviction (unless defendant consents), and provided that the preconviction investigation be limited in scope, such as to matters of court or public record or areas of inquiry specifically directed by the judge. These limitations would respond to the principal objections to preconviction investigations.[98] A prohibition against disclosure, as in the Federal Rule, and the limitation in the scope of the investigation, relate to preservation of the defendant's privacy interests, and to protection of the 5th Amendment guarantee against self-incrimination.[99] The other principal objection to preconviction investigations relates to the possible wasting of resources on unnecessary investigations, such as for defendants who may be acquitted. It seems likely, however, that judges will not often exercise the discretion to order an early investigation unless circumstances make it acceptably likely that a report will be needed.

E. FORMAT AND CONTENTS OF PRESENTENCE REPORTS

1. Written Versus Oral Reports

Written reports are specified or implied in model code provisions, and are the rule in the federal courts and 82% of the States that responded to the AOC survey.[100] A requirement for written reports has been urged for felonies by the Governor's Crime Commission, in an Institute of Government study, and by some survey respondents.[101]

Oral reports are likely less thorough and less easily verified, are not subject to inspection by the defendant before the sentencing hearing, are not available for use by DOC after sentencing, and are subject to the uncertainties that particularly in law raise a preference for written mediums of communication. Some probation officers commented, in essence, that if a report is necessary and worth doing, it should be done well. The advantage of oral reports seems limited to a savings of time and resources.

The actual savings of time between a written and oral report seems debatable. At present, probation officers use a standardized written form as the basis for the investigation for an oral report. The time required to reduce the results to writing cannot be great relative to the time required, in any event, for the investigation.

Perhaps the principal empirical question for this issue is whether a requirement for a written report would have the result of dissuading use of presentence reports.

Or, conversely, as the ABA suggests, might a sketchy report be worse than none at all?

The policy arguments and the weight of authority for written reports seem persuasive, at the least, in the circumstances where the arguments for a mandatory requirement are strongest, felonies and offenders under 21 convicted of serious misdemeanors. An alternative to immediate, statewide imposition of a requirement for written reports would be to test the empirical questions concerning actual differences in cost, frequency of use, and effectiveness as between written and oral reports in the context of a pilot study.

2. Inclusion of Juvenile Delinquency Records in Presentence Reports

An ambiguity in present law, concerning whether or not juvenile delinquency records may be considered when sentencing an adult and, therefore, whether these records should be included in presentence reports, was detailed previously. Most states, model codes, and the federal courts appear to include juvenile delinquency information in presentence reports.

Although a few respondents mentioned juvenile records as additional information that should be included in reports, the AOC survey did not expressly address this issue and survey data offer no adequate indication of the views of judges or others on this issue.

The historic protected status afforded juvenile records in North Carolina argues against sweeping inclusion of delinquency records in presentence reports, as is allowed by the federal rule. But the essence of this historic status seems to be protection of juveniles, as opposed to protection of adult criminals. Inclusion of a juvenile delinquency record in a presentence report for the sentencing of an adult (i.e., age 18 or older) would seem consistent with both the objectives of sentencing in the criminal law, and protection of juveniles.

3. Specific Contents of Presentence Reports

Present law directs a presentence investigation into "all circumstances relevant to sentencing." An argument can be made that, in general, a more specific statutory directive would be helpful. But a statutory directive would of necessity be phrased in terms of rather broad categories of information; and it would be difficult to preserve the flexibility required for various cases. The specific format and contents of presentence report forms are matters which should be delegated to appropriate administrative agencies, with judges having discretion to choose the appropriate form and specify the scope for specific cases..

In general, present North Carolina forms seem to compare favorably to much of the materials provided to AOC by various states. But there is certainly room for improvement, particularly should written or mandatory

presentence reports become the rule. AOC survey data, and materials from other states, may offer a rich opportunity, and seem to suggest the need, for a DOC reevaluation of the format and contents of presentence reports. (These materials are, of course, being provided to DOC.)

The following listing of specific areas of potential improvement does not purport to anticipate final conclusions, but is intended to illustrate the principal areas of and need for evaluation:

1. a more explicit emphasis on verification (in some states, this is evident on the report itself, as well as in detailed procedures developed for the investigation);

2. more exclusive focus on the few specific items of information most useful (and likely to be used) for sentencing, particularly for any reports that might be mandatory (with the goal that presentence reports be an important source of important information that is not otherwise available);

3. less detail in certain tangential areas (as suggested by numerous respondents);

4. a more narrative prose format, as opposed to heavy reliance on a "fill-in-the-blank" format (this was suggested by numerous probation officers; it reportedly was the format of prior DOC presentence report forms); and

5. a matter for AOC, particularly if reports become mandatory, development of a comprehensive form by which a judge can order (or waive) a presentence report, or specify items of information to be covered (including, for example, aggravating and mitigating circumstances).

F. WHO SHOULD PREPARE (1) PRESENTENCE REPORTS AND (2) COMMUNITY PENALTY PLANS

Differences in purpose and philosophy between community penalty plans under the Community Penalties Act,

and presentence reports from probation officers under G.S. 15A-1332, were detailed previously. These differences seem to justify the present system of separation between these two types of reporting.

Data presented in this study indicate that expansion of and improvement to presentence reports from probation officers should be considered as a means to provide judges with better information for sentencing, but not as a means that might lead to a change in prison population, or for any other specific sentencing result. In contrast, expansion of Community Penalties Programs should be considered as a means to divert appropriate offenders from prison.

This is not to say that there should be no similarities between these two types of reports. A probation officer's report should probably include some information on the availability of alternatives to incarceration, particularly since judges indicated that this information is considered very important to sentencing. And, a community penalty plan should contain the same types of background information about a defendant as are given a probation officer's report, including information that may be negative, such as victim impact.

However, the continuation of both types of presentence reporting by present personnel seems justified and desirable. It seems inevitable and appropriate that all such sentencing reports provided to judges have some

similarities in format and content, specifically regarding features that will provide judges with the best possible informational base for sentencing. But the differences in purpose, orientation, philosophy, and impact between probation officers' reports and community penalty plans will likely remain distinct, and distinctly valid. To the extent that there are risks of duplication of effort, Community Penalties Programs might more clearly be directed by statute to coordinate with probation officers while a plan is being prepared (see G.S. 15A-504(6)), a practice reported to be routine.

1. Presentence Reports By Probation Officers

Nationwide, probation officers prepare presentence reports.[102] There was no evidence from the AOC survey of a desire for change to this system, nor evidence from any of our data that any of the problems or solutions relative to presentence reporting are traceable to or solvable by having some other persons prepare presentence reports.

2. Community Penalty Plans

As previously summarized, in one judicial district community penalty plans are prepared by and presented to the judge by state employees under the supervision of a judge. In all other Programs, plans are prepared by employees of nonprofit private corporations, and are presented to the judge by defendant's attorney. These differences seem to reflect different balances between such

priorities as the need for judicial control over sentencing, the need for community control over community-based sanctions, and the need for objectivity in presentence reporting to judges.

Consideration could be given to a statutory requirement that requires all Programs to maintain nonpartisanship in their reports to judges, and in their interaction with defense counsel; such a requirement is presently set forth in DCCPS Guidelines. The goals of Community Penalties Programs (see Section I.C.) seem to indicate a fine line between advocating for appropriate alternatives to prison, as opposed to advocating for the defendant. Statutory recognition of the need to avoid advocacy for the defendant may make the Programs more credible to more judges and district attorneys.

However, the policy questions raised by the differences between Community Penalties Programs are substantial, and go beyond the relationship to defense counsel. The one Program under judicial supervision has been presenting plans under this system only since November, 1987; it will be some time yet before sufficient data exist for a valid comparative analysis of the effectiveness of the various Community Penalties Programs. Consideration should be given to conducting a study of these differences, at such time as sufficient data exist.

G. SHOULD JUDGES BE AUTHORIZED TO ORDER A COMMUNITY PENALTIES PROGRAM TO PREPARE A COMMUNITY PENALTY PLAN?

As discussed previously, judges at present are not expressly authorized to order DCCPS Programs to prepare community penalties plans. Except among district attorneys, substantial majorities of all survey respondents would favor such authority. Since it is reported that judges "refer" offenders to the Programs, and that such referrals are routinely accepted, authority to order a plan prepared may not constitute a change in practice.

The only apparent objection to such authority would seem to be that judges might order a plan for offenders, or in circumstances, inconsistent with the Act's purpose (use of community-based sanctions for offenders who otherwise would go to prison). However, there is no reason to presume that judges are less able than Program personnel to identify offenders who seem prison-bound, but who might appropriately be diverted from prison. DCCPS data indicate that many such offenders are not being reached by Community Penalties Programs at present. And, it seems possible that authorizing judges to order preparation of community penalty plans for any offender that the judge believes is likely prison-bound if convicted and otherwise appropriate for a community-based sanction could have the effect of heightening judicial acceptance of, awareness of, and involvement with community-based alternatives. It should be obvious, however, that a report to the judge could

properly conclude that no community penalty proposal is appropriate.

H. MULTIPLE USES OF PRESENTENCE REPORTS

Finally, without elaboration of prior discussion, there would seem to be no strong policy objection to the sharing of a presentence report within the various Divisions of DOC. The ABA recommends rather extensive coverage of an offender's character and background, in part because the report will then be more useful for classification and other internal correctional decisions.[103] Probation officers report that presentence reports are already widely used after sentencing for such purposes as probation and parole supervision.[104] Use of a presentence report by the Division of Prisons may avoid duplication of effort within DOC.

Similar considerations would seem to apply within any DOC review of the format and content of presentence reports, and any other materials prepared by DOC. It seems that all data collected during the life of a criminal case should be collected only once, and set forth in a form that facilitates its use at all stages of an offender's involvement with the criminal justice system.

VIII. ESTIMATED RESOURCES NEEDED TO PREPARE PRESENTENCE REPORTS SHOULD REPORTS BE MANDATORY

Several assumptions must be made to estimate the resources that would be required for mandatory presentence reporting, and some estimates are given for alternative assumptions. Such factors as the nature of any "mandatory" requirement (strict or qualified), and the level of detail that would be given in presentence reports, influence how many additional reports would be prepared, and how many employees would be needed to prepare them.

In summary (details follow), the assumptions that best reflect the analysis set forth in Section VII of this report are for: 1) a "mandatory" requirement that the judge could override; and 2) more thorough presentence reporting than seems indicated by the present practice of 77% oral reports. The best planning estimates for these two assumptions that seem possible at this time are that 1) judges would override a qualified mandatory requirement in 25% of the cases; and 2) presentence reports would be prepared on a mix of the standardized forms, specifically, reports would be prepared using the PSI 1 form (the least detailed report) for 25% of the cases, PSI 2 (an intermediate form) for 50%, and PSI 3 (the most detailed form) for the remaining 25% of the cases.

Estimated annual resource requirements, based on these assumptions, are given on the following table.

ESTIMATED ANNUAL ADDITIONAL RESOURCE REQUIREMENTS FOR MANDATORY PRESENTENCE REPORTING

Assuming: (1) a qualified requirement that the judge would override in 25% of the cases; and

(2) preparation of presentence reports on a mix of PSI forms, 25% PSI 1, 50% PSI 2, and 25% PSI 3.

Superior Court	
Felonies	$1,232,000
Misdemeanors	$1,355,200
Total	$2,587,200
District Court	
(Misdemeanors only)	$3,480,400
Total, Both Courts	$6,067,600
Superior court felonies, and misdemeanors in both courts committed by offenders under age 21*	$1,817,200

*Analysis in Section VII of this report suggests that the most appropriate case categories for mandatory presentence reporting are felonies and the most serious misdemeanors committed by offenders under age 21. However, the estimate above is not limited to the most serious misdemeanors (the data on which it is based include all convictions in superior court, and all convictions in district court that resulted in an active prison or jail sentence).

Following is an explanation of how these estimates were calculated, plus resource estimates based on certain alternative assumptions.

1. Estimated Numbers of Additional Presentence Reports That Would Be Prepared Under a Strict Mandatory Requirement

The maximum number of additional presentence reports that might be prepared under a mandatory requirement would equal the number of persons convicted minus the number of presentence reports prepared under current, discretionary law. This estimate is given on the following table. It represents a "maximum" because the calculation at this point makes no attempt to account for the possibility that a "mandatory" requirement might be qualified, and that judges might override the requirement for some percentage of these additional cases. In effect, the following estimates would be for a strict requirement that the judge could not override for any case.

ESTIMATED MAXIMUM NUMBERS OF ADDITIONAL PRESENTENCE REPORTS THAT WOULD BE PREPARED IF PRESENTENCE REPORTS WERE MANDATORY

	Projected Annual # of Persons Convicted*	Projected Annual # of Reports Prepared, Current Law**	Difference: Additional Reports Needed
Superior Court			
Felonies	12,945	3,374	9,571
Misdemeanors	11,308	594	10,714
Total	24,253	3,968	20,285
District Court			
(Misdemeanors only)	40,110	12,642	27,468
Both Courts	64,363	16,610	47,753
Superior court felonies, and misdemeanors in both courts committed by offenders under age 21***	22,915	8,588	14,327

*These figures are carried forward from the table in Section II of this report.

**These figures are carried forward from the table in Section I.B. of this report.

***Analysis in Section VII of this report suggests that the most appropriate case categories for mandatory presentence reporting are felonies and the most serious misdemeanors committed by offenders under age 21. However, the above estimates are not limited to the most serious misdemeanors (the data on which they are based include all convictions in superior court, and all convictions in district court that resulted in an active prison or jail sentence).

2. Amount of Time Required to Prepare Presentence Reports

On the AOC survey, probation officers reported the following average hours required to complete a presentence investigation and report for the three standardized forms:

PSI 1: 1.9 hours
PSI 2: 5.1 hours
PSI 3: 17.1 hours

For subsequent analysis, these average times are rounded to the nearest whole number, and one other adjustment is made.

Based on prior study, the DOC Division of Adult Probation and Parole estimates a time of nine hours to prepare the PSI 2 form. In consultation with DOC, it was concluded that the figure of 8.0 hours would constitute a reasonable and appropriate planning estimate for the time required to prepare the PSI 2 form. DOC advises that this time estimate, and those reported on the AOC survey for PSI 1 and PSI 3, may be considered adequate for all investigative, court, and other time needed for preparation of written reports.

In summary, therefore, subsequent analysis is based on the following time requirements for preparation of presentence reports:

PSI 1: 2 hours
PSI 2: 8 hours
PSI 3: 17 hours

3. Numbers of Presentence Reports a Full-Time Employee Could Prepare in One Year

The number of employees needed to perform additional presentence report work will be based on the number of presentence reports a single employee can prepare in one year.

It will be assumed that a full-time probation officer could devote at least 1,600 hours per year to presentence report work. This estimate is based on a work-year of 46 weeks (52 weeks, less 2 weeks vacation, 2 weeks sick leave, and two weeks paid holiday); and on a workweek of 35 hours devoted to principal duties (allowing an average of one hour per day for such ancillary tasks as internal recordkeeping, data reporting, training, and other administrative tasks). These estimates may be liberal in the sense that an employee may not take a full two weeks sick leave in one year, or may devote more than an average of 35 hours per week to principal duties. To that extent, these estimates will result in a need for more employees than would result if, for example, a work-year of 1,700 hours were assumed.

As shown on the following table, the numbers of presentence reports a full-time employee could prepare in one year is 1,600 hours divided by the number of hours required to prepare each presentence report form.

NUMBERS OF PRESENTENCE REPORTS A FULL-TIME EMPLOYEE COULD PREPARE IN ONE YEAR

	Estimated Annual Hours a Full-Time Employee Devotes to Principal Duties*	Divided By Number of Hours Needed to Prepare Presentence Reports**	Number of Reports a Full-Time Employee Could Prepare in One Year
PSI 1	1,600	2.0	800
PSI 2	1,600	8.0	200
PSI 3	1,600	17.0	94

*The estimate of 1,600 hours is explained in preceding text.

**These figures are carried forward from the preceding table.

4. Initial Personnel and Resource Estimates for Mandatory Presentence Reporting

The personnel and resource estimates on the following table are "initial" estimates in the sense that refinements will be made for certain alternative assumptions, using these estimates as the base data. While the following may have value for purposes of comparison, they do not necessarily represent the best possible planning estimates for the most likely or appropriate use of presentence reports under a mandatory requirement.

The following estimates, in effect, assume: 1) a strict mandatory requirement, under which reports would be prepared for all additional cases; and 2) a strict uniformity in the types of reports that would be prepared, specifically, that all reports would be PSI 1, or (in the

alternative) all would be PSI 2, or (in the alternative) all would be PSI 3 reports.

A two-step calculation is involved for each report form. First, the number of reports to be prepared is divided by the number of reports a full-time employee can prepare in one year; this yields the numbers of additional probation officers needed. Second, the numbers of probation officers needed are multiplied by $30,800, the total amount DOC advises is budgeted for the entry level Probation/Parole Officer I position, including all fringe benefits, social security, travel, equipment, etc.

ESTIMATED ANNUAL PERSONNEL AND RESOURCE REQUIREMENTS FOR MANDATORY PRESENTENCE REPORTING--ASSUMING: (1) A STRICT MANDATORY REQUIREMENT THAT RESULTS IN PREPARATION OF REPORTS FOR ALL CASES; AND (2) PREPARATION OF REPORTS AS ALL FORM PSI 1, OR ALL FORM PSI 2, OR ALL FORM PSI 3

	# of Additional Probation Officers Needed, If All Additional Reports Are:*			Amount of Additional Resources Needed, If All Additional Reports Are:**		
	PSI 1	PSI 2	PSI 3	PSI 1	PSI 2	PSI 3
Superior Court						
Felonies	12	48	102	$ 369,600	1,478,400	3,141,600
Misdemeanors	13	54	114	$ 400,400	1,663,200	3,511,200
Total	25	102	216	$ 770,000	3,141,600	6,652,800
District Court						
(Misdemeanors only)	34	137	292	$1,047,200	4,219,600	8,993,600
Both Courts	59	239	508	$1,817,200	7,361,200	15,646,400
Superior court felonies,and misdemeanors in both courts committed by offenders under age 21***	18	72	152	$ 554,400	2,217,600	4,681,600

*These figures are calculated by dividing the numbers of additional presentence reports to be prepared (from the table on page 84), by the number of reports a probation officer can prepare in one year (from the table on page 87).

**These figures represent the numbers of probation officers multiplied by $30,800, the total amount budgeted for the entry level Probation/Parole Officer I position.

***Analysis in Section VII of this report suggests that the most appropriate case categories for mandatory presentence reporting are felonies and the most serious misdemeanors committed by offenders under age 21. However, the above estimates are not limited to the most serious misdemeanors (the data on which they are based include all convictions in superior court, and all convictions in district court that resulted in an active prison or jail sentence).

5. Personnel and Resource Estimates Assuming a Mix of PSI 1, PSI 2, and PSI 3 Forms

It seems likely that under a mandatory requirement, as under present practice, a mix of presentence report forms would be ordered, some PSI 1, some PSI 2, and some PSI 3.

Consideration is given to the analysis set forth in Section VII of this report, including the possible merits of requiring written rather than oral and more strictly verified reports. In essence, the objective would be to provide more thorough reporting than seems indicated by the present practice under which 77% of all reports are oral reports based on the PSI 1 form. One way to translate this objective into numeric terms would be to reverse current practice, making 75% of the reports submitted more thorough than PSI 1, rather than 75% of the reports being PSI 1.

Consistent with this objective, and in consultation with DOC, the best estimate for planning that seems possible at this time would be as follows: 25% PSI 1, 50% PSI 2, and 25% PSI 3.

The following table gives personnel and resource estimates for this assumption. At this point, these estimates are still based on a strict mandatory requirement. A final refinement will follow, to take into account the possibility of a qualified requirement that the judge could override.

PERSONNEL AND RESOURCE REQUIREMENTS FOR MANDATORY PRESENTENCE REPORTING--ASSUMING: (1) A STRICT MANDATORY REQUIREMENT THAT RESULTS IN PREPARATION OF REPORTS FOR ALL CASES; AND (2) PREPARATION OF REPORTS ON A MIX OF PSI FORMS, 25% PSI 1, 50% PSI 2, AND 25% PSI 3

	# of Additional Probation Officers Needed If Pre-sentence Reports Were Ordered in the Following Mix of PSI Forms:*				Additional Resources Required:**
	25% PSI 1	50% PSI 2	25% PSI 3	Total	
Superior Court					
Felonies	3	24	26	53	1,632,400
Misdemeanors	3	27	29	59	1,817,200
Total	6	51	55	112	3,449,600
District Court					
(Misdemeanors only)	9	69	73	151	4,650,800
Both Courts	15	120	128	263	8,100,400
Superior court felonies, and misdemeanors in both courts committed by offenders under age 21***	5	36	38	79	2,433,200

*These figures are .25, .50, and .25 times the numbers of probation officers shown in the corresponding columns for each respective PSI form on the table on page 89.

**These figures represent the total number of probation officers multiplied by $30,800, the total amount budgeted for the entry level Probation/Parole Officer I position.

***Analysis in Section VII of this report suggests that the most appropriate case categories for mandatory pre-sentence reporting are felonies and the most serious misdemeanors committed by offenders under age 21. However, the above estimates are not limited to the most serious misdemeanors (the data on which they are based include all convictions in superior court, and all convictions in district court that resulted in an active prison or jail sentence).

6. Personnel and Resource Estimates Assuming a Qualified "Mandatory" Requirement That the Judge Could Override

Analysis in Section VII of this report suggests that any consideration of a mandatory requirement focus on a qualified requirement, that the defendant could waive with the judge's permission, or that the judge could overcome with an appropriate finding that no presentence report is needed.

Under current discretionary law, reports are ordered for only some 26% of persons convicted. But in the AOC survey, some judges indicated that reports would be ordered more frequently if they felt that probation units had sufficient personnel. And, one objective of any mandatory requirement would be to increase the use of presentence reports. If a qualified mandatory requirement were to reverse current practice, presentence reports would be ordered for 75% of the cases (rather than not ordered for 75% of the cases).

Within the AOC survey of other states, Connecticut reported a 30% reduction in use of presentence reports after a statute was enacted to allow the defendant (with the judge's permission) to waive the requirement of a presentence report in felony cases.

The federal rule contains a qualified mandatory requirement like the one described above. Based on an interview with supervisory probation personnel in the U.S. District Court for the Eastern District of North Carolina

(in Raleigh), local federal practice is that presentence reports are prepared for all felony cases, but only infrequently for misdemeanor cases tried by magistrates. This information is difficult to apply numerically to what a similar practice in North Carolina might consist of. North Carolina conviction data in this study already exclude the vast majority of minor misdemeanor cases (see Section II). But the essence of local federal practice seems to be that presentence reports are rarely waived in serious cases, and virtually never waived in felonies.

In consultation with DOC, it was concluded that the most appropriate estimate for present planning purposes, based on current information and experience, would be that under a qualified "mandatory" requirement reports would be ordered for 75% of the additional cases (or, conversely, that judges would override the requirement in 25% of the additional cases).

The table that follows gives personnel and resource estimates for this assumption (these resource estimates were also given at the beginning of this section).

ESTIMATED ANNUAL PERSONNEL AND RESOURCE REQUIREMENTS FOR MANDATORY PRESENTENCE REPORTING--ASSUMING: (1) A QUALIFIED "MANDATORY" REQUIREMENT THAT THE JUDGE WOULD OVERRIDE IN 25% OF THE ADDITIONAL CASES; AND (2) PREPARATION OF PRESENTENCE REPORTS ON A MIX OF PSI FORMS, 25% AS PSI 1, 50% PSI 2, AND 25% PSI 3

	Number of Additional Probation Officers Needed*	Additional Resources Required**
Superior Court		
Felonies	40	$1,232,000
Misdemeanors	44	$1,355,200
Total	84	$2,587,200
District Court		
(Misdemeanors only)	113	$3,480,400
Both Courts	197	$6,067,600
Superior court felonies, and misdemeanors in both courts committed by offenders under age 21***	59	$1,817,200

*Figures in this column are .75 times the total numbers of probation officers indicated on the table on page 91.

**These figures represent the number of probation officers multiplied by $30,800, the total amount budgeted for the entry level Probation/Parole Officer I position.

***Analysis in Section VII of this report suggests that the most appropriate case categories for mandatory presentence reporting are felonies and the most serious misdemeanors committed by offenders under age 21. However, the above estimates are not limited to the most serious misdemeanors (the data on which they are based include all convictions in superior court, and all convictions in district court that resulted in an active prison or jail sentence).

IX. RECOMMENDATIONS

1. RECOMMENDATIONS REGARDING MANDATORY PRESENTENCE REPORTING

Presentence reports should not be mandatory on an immediate statewide basis.

(a) Possible Pilot Study

Consideration should be given to making presentence reports mandatory, for some cases, in a limited number of judicial districts or counties, in the context of a pilot study. The purpose of such study would be to evaluate the impact of presentence reports on sentencing, and any differences in this impact that seem to depend on whether reports are mandatory, or on such variables as the format and contents, and time of preparation.

The specific geographic areas where such pilot study might best be conducted, and other specific incidents of any such study, are best considered in close consultation with the agency or organization that would conduct the study.

(b) The Meaning of "Mandatory," Should Mandatory Reporting Be Considered

If "mandatory" presentence reporting is considered, only a qualified, or "presumptive," requirement should be considered, specifically: a requirement that could be waived by the defendant with the judge's permission, or overridden by the judge upon a finding that sufficient

information is available for sentencing without a presentence report.

One exception to the qualified nature of any mandatory requirement should be considered. For felony offenders age 14 or older but under age 16, consideration should be given to a strict requirement that cannot be waived or overridden.

Finally on this topic, exceptions to all mandatory requirements seem justified in all cases where a statute imposes a mandatory sentence, and in all cases where the judge approves a plea bargain arrangement that includes an agreement between the defendant and the State as to sentence.

(c) The Case Categories That Seem Most Appropriate For Any Consideration of Mandatory Reporting

Consideration of mandatory presentence reporting should be limited to the following case-types: (i) noncapital felonies in superior court, and (ii) superior and district court misdemeanors committed by an offender under age 21 and punishable by imprisonment for more than six months.

2. RECOMMENDATION REGARDING MANDATORY COMMUNITY PENALTY PLANS

It is recommended that community penalty plans not be made mandatory. Consideration should be given to clarifying present law, so as to more clearly require an investigation of all eligible offenders, within available

resources, and require preparation of a community penalty plan if it is found that a community-based alternative to prison seems appropriate under all the circumstances.

3. RECOMMENDATION REGARDING EXPANSION OF COMMUNITY PENALTIES PROGRAMS

Community penalty plans are specialized sentencing proposals for alternatives to prison. Community Penalties Programs should be expanded, both to other geographic areas and as to existing programs, to the extent that it would be cost-effective to do so in terms of the numbers of offenders who may be diverted from prison.

4. RECOMMENDATIONS PERTAINING TO WHEN PRESENTENCE REPORTS SHOULD BE PREPARED

Trial judges should be given authority to order a presentence investigation before conviction without defendant's consent provided that disclosure of the report or its contents to the judge, jury, or district attorney be prohibited until after determination of guilt, in the absence of defendant's consent to prior disclosure, and provided that the preconviction investigation be limited in scope to matters of public or court record and to matters specifically directed by the judge.

5. RECOMMENDATIONS PERTAINING TO THE FORMAT AND CONTENTS OF PRESENTENCE REPORTS

(a) Written Versus Oral Reports

Presentence reports should be required to be submitted in writing for all noncapital felonies, and for all superior and district court misdemeanors committed by an offender under age 21 and punishable by more than six months imprisonment.

An alternative to immediate statewide imposition of such a requirement would be imposition within the context of any pilot study.

(b) Inclusion of Juvenile Records

With regard to defendants age 18 or older, statutory restrictions regarding access to juvenile delinquency records should be amended so as to allow such records to be included in presentence reports.

(c) Specific Contents of Presentence Reports

The Department of Correction, Division of Adult Probation and Parole, should reevaluate the format and contents of presentence reports, and the formal procedures promulgated for the conduct of investigations, with the goal of improving verification, and tailoring the contents to the specific areas of information most useful to judges, and not otherwise provided.

Consideration should be given to a statutory requirement that, with respect to material information in a presentence report that is challenged by the defendant, the

judge must find that the information has been adequately verified by the probation officer, or order such verification as the judge deems necessary, or disregard the information in determining the sentence.

6. RECOMMENDATIONS PERTAINING TO WHO SHOULD PREPARE PRESENTENCE REPORTS AND COMMUNITY PENALTY PLANS

No changes are recommended with respect to the personnel who at present prepare presentence reports and community penalty plans.

Community Penalties Program personnel should be required by statute (as is presently required by Guidelines promulgated by DCCPS) to contact and coordinate with probation departments whenever a community penalty plan is being prepared, and to maintain a balanced objectivity in their investigations, with no prejudgment as to their outcome and without advocacy for the defendant or the prosecution. A study should be conducted to evaluate the effectiveness of Programs which operate with state employees under the supervision of a judge as compared with those Community Penalties Programs which operate with employees of private nonprofit corporations.

The Department of Corrections should consider operating pilot projects, if adequate resources are available, in which some personnel would be assigned exclusively to presentence investigation and report functions with other personnel having only probation supervision duties, to aid in determining whether this

specialization in functions among the probation officers has merit.

7. RECOMMENDATION PERTAINING TO JUDICIAL AUTHORITY TO ORDER A COMMUNITY PENALTIES PROGRAM TO PREPARE A COMMUNITY PENALTY PLAN

Express statutory authority should be provided for any judge to order a Community Penalties Program to conduct an investigation and submit an appropriate plan for any offender who the judge believes may receive a prison sentence and who, after investigation, appears to be appropriate for consideration of a community-based alternative.

8. RECOMMENDATIONS PERTAINING TO DUPLICATION OF EFFORT WITHIN DOC

Present law should be clarified so that a presentence report may be provided by the Division of Adult Probation and Parole to the Division of Prisons, for use in classification of prisoners and any other correctional needs.

The Department of Correction should consider tailoring the format and contents of all data collected about a defendant, including presentence reports, so as to facilitate use of such data at all stages of an offender's interaction with the Department of Correction.

FOOTNOTES

[1]G.S. 15A-1332.

[2]N.C. Constitution, Article IV, Section 11.

[3]Information on the "current practice" as regards presentence reports is derived from interviews with and surveys of DOC personnel, judges, lawyers, and other personnel.

[4]Although subject to some exceptions, all felony sentences of imprisonment must be served in a DOC facility, and all misdemeanor sentences of six months or less must be served in a local facility. G.S. 15A-1352. All felonies are punishable by more than six months, G.S. 14-1.1.

[5]See G.S. 148-12(a), which requires DOC to "establish diagnostic centers to make social, medical, and psychological studies of persons committed to the Department."

[6]G.S. 15A-1332(c) directs the Department to "forward the study" to the court clerk. The necessary implication is that the study must be in writing.

[7]G.S. 15A-1333(b). A presentence investigation must be submitted "either on the record or with defense counsel and the prosecutor present." Although less explicit, G.S. 15A-1332(c) requires DOC to "forward" the report of a presentence commitment to the clerk of court. Since defendant has the right of access to such written report at any reasonable time, the presentence commitment study is filed on the record.

[8]G.S. 15A-1334. The defendant has the right to make a statement and both the State and defendant may present and cross-examine witnesses; only the defendant, defendant's lawyer, the prosecutor, and "one making a presentence report" may "comment" at the sentencing hearing unless called as a witness.

[9]G.S. 15-198, "Investigation by Probation Officer," 1937 Session Laws, Chapter 132, Section 2, repealed, 1977 Session Laws, Chapter 711, Section 33.

[10]Ibid.

[11]Ibid. No case law was located construing this provision of G.S. 15-198.

[12]Present law has been amended once since 1977. The amendment allows a judge to order presentence commitment of a defendant charged with or convicted of (as opposed to just convicted of) a crime punishable by more than six months. Thus, the amendment allowed presentence commitment

before or after conviction. Both before and after this amendment, the defendant's consent has been required. G.S. 15A-1332(c), as amended by 1981 Session Laws, Chapter 377, Section 1.

[13]G.S. 15A-1340.4.

A good overview of the history and purposes of the FSA, and an empirical study of its operation and impact, has been published by the Institute of Government. Clarke, Felony Sentencing in North Carolina, 1976 - 1986: Effects of Presumptive Sentencing Legislation (1987)(hereinafter cited as "1987 Felony Sentencing Study").

[14]See generally, State v. Ahearn, 307 N.C. 584 (1983), which summarizes the significant areas of discretion judges exercise under the FSA as regards the length of a felony sentence.

[15]An Agenda in Pursuit of Excellence: The 1981 Legislative Program of the Governor's Crime Commission, at pages 73-74, (September, 1980).

[16]Clarke, 1987 Felony Sentencing Study, supra note 13, at page 26.

[17]We express appreciation to probation officers and their supervisors for their work in this special data collection effort, and to Mr. George Barnes, Assistant Director of the DOC Division of Adult Probation and Parole, and Mr. C. Linwood Joyner, a Regional Chief of Field Services, for their cooperation, advice and assistance.

[18]Annual projections were calculated as follows. We were advised by the Division of Adult Probation and Parole that December is an atypical, low-volume, month in the number of presentence reports submitted, due to the holiday season. November, January, and February were assumed to be typical, or representative, months in terms of the number of presentence reports submitted. Therefore, presentence reports submitted in November, January, and February constitute three elevenths of the projected annual total, and presentence reports submitted during December constitute the remainder of the estimated annual total. In essence, the projected annual total merely multiplies the number of reports submitted during the months data were collected by the fractional number of months these data represent, but treating the month of December as a special, unrepresentative Month.

Since November and January also have holidays, and since February was a short month, the margin of error in these data would seem more likely to under rather than overestimate the number of presentence reports submitted

annually. Cost and other analysis based on these data may be regarded as resulting in minimum estimates.

Obviously, there will be some margin of error in any process of estimation. However, these data are the best data available on the present use of presentence reports in North Carolina, and may be regarded as good planning figures.

[19]The present 13 Community Penalties Programs, and the judicial districts and counties they serve are:

Appropriate Punishments Options, Inc.	District 22 (Iredell, Davie, Davidson, Alexander)
Buncombe County CPP	District 28 (Buncombe)
Community Penalties Program, Inc.	District 5 (New Hanover, Pender)
Dispute Settlement Center, Inc.	District 15B (Chatham, Orange)
Fayetteville Area Sentencing Center, Inc.	District 12 (Cumberland, Hoke)
Gaston County CPP	District 27A (Gaston)
Jacksonville CPP	District 4 (Duplin, Jones, Onslow, Sampson)
Neighborhood Justice Center, Inc.	District 21 (Forsyth)
One Step Further, Inc./Sentencing Alternative Center	District 18 (Guilford)
Prison and Jail Project of North Carolina	District 14 (Durham)
Reentry, Inc.	District 10 (Wake)
Repay, Inc.	District 25 (Burke, Caldwell, Catawba)
Western Carolinians for Criminal Justice	District 29 (Henderson, McDowell, Polk, Rutherford, Transylvania)

[20]Wallace and Clarke, The Sentencing Alternatives Center in Guilford County, North Carolina: An Evaluation of its Effects on Prison Sentences, (Institute of Government, March, 1987).

This study, and one other conducted by the Institute of Government on another Community Penalties Program (in Hickory, N.C.), constitute exceptions to the caveat stated in the Introduction, regarding the absence of empirical data on the impact of presentence reporting. This study concluded, at page 29:

> "The evaluation showed that (the Sentencing Alternative Center (SAC)) significantly reduced prison sentences for the defendants it served. It also showed that SAC has achieved a modest reduction in active sentence lengths."

[21]G.S. 143B-501 and 502.

The Secretary of DCCPS has promulgated Guidelines applicable to these twelve Community Penalties Programs, in DCCPS Regulations, Chapter 11 (for the Division of Victim and Justice Services).

The requirement that the programs be nonprofit private corporations is set forth in DCCPS Regulations, Chapter 11, Section .0402(1).

Grants of state funds are limited to no more than 90% of a program's total expenses the first year of operation, and no more than 80% thereafter. DCCPS Regulations, Chapter 11, Section .0409. DCCPS proposes to raise funding levels after the first year to no more than 85% of total expenses.

[22]1987 Session Laws, Chapter 862.

[23]The Board of Directors of each program "must be representatives of the district's criminal justice system and the community-at-large. (It . . .) shall include, if possible, judges, district attorneys, attorneys, social workers, law enforcement representatives, probation representatives, and other community leaders." DCCPS Guidelines, supra note 21. Section .0402(1); see G.S. 143B-505.

[24]G.S. 143B-503(2) specifies that community penalty plans are presented to the judge by the defendant's lawyer.

The American Bar Association has promulgated "Standards" for sentencing, including extensive coverage of presentence reporting. Standards for Criminal Justice, Sentencing Alternatives and Procedures (1980)(hereinafter cited as "ABA Standards"). According to the ABA, it is the responsibility of the defendant's attorney to provide the judge with information relevant to the least restrictive

sentencing alternative, including community-based sanctions "in appropriate cases." Standard 18-6.3(e)(iv).

DCCPS Guidelines direct Programs to avoid advocating for the accused, but rather to advocate for alternatives to incarceration. Guidelines, supra note 21, Section .0407(2)(I). It seems likely that this fine line poses a challenge in practice, as between coordination with defendants and their lawyers, and maintaining nonpartisanship in the information prepared for the judge.

[25] G.S. 143B-501(5).

Offenders charged with these crimes are identified primarily from indictments, but also by referrals from defense lawyers and judges.

Determination of whether such an offender is likely to receive a prison sentence is made in part by application of criteria developed by the Institute of Government. Various characteristics of the offense and of the offender are assigned numeric scores and tallied on a "prison risk scoresheet." If the score exceeds a certain cutoff point, based on empirical study an offender is predicted to be prison-bound. Wallace and Clarke, The Institute of Government's Prison Risk Scoresheet: A User's Manual (April, 1984). Other more judgmental criteria are also used to conclude that an offender is or is not likely prison-bound.

[26] See 1987 Session Laws, Chapter 862.

The Guidelines for Operation of the Buncombe County Community Penalties Program, adopted by Chief District Court Judge Earl J. Fowler in October, 1987, provide in Section III.B. that a community penalty plan is to be prepared for an offender upon notice that the presiding judge has so ordered "and not before."

Both these Guidelines, and an opinion from the Attorney General's office dated November 25, 1987, expressly state that the purpose of the Community Penalties Act (to reduce prison overcrowding) applies to the Buncombe Community Program.

For after the judge has ordered an investigation for a particular offender, the Buncombe County Guidelines direct the Program to determine whether or not a community-based penalty is "feasible." The Program is directed to prepare and submit a community penalty plan "if" it finds that the offender is a "targetted offender," c.f. G.S. 143B-501(5), and that a plan is "appropriate." The Guidelines list criteria to be applied for determination of whether a plan is appropriate. If a community penalty plan, per se, is

found not feasible, this fact will be reported to the judge, along with the basis for the conclusion.

[27]We have no independent verification, such as from judges, of whether a plan was accepted. Program personnel consider a plan accepted in full when the sentence imposed does not deviate at all from the plan's proposal. According to DCCPS data for 1986-87, 59 plans were accepted in part, with the judge imposing a sentence different from that proposed by the plans in the following respects:

	Number	% of Total
Modified community service	17	29%
Added a split sentence	13	22%
Added prison time	8	14%
Rejected rehabilitation component	6	10%
Reduced active time	2	3%
Changed probation from:		
intensive to regular	2	3%
regular to intensive	2	3%
Added a fine	1	2%
Other	8	14%

[28]Wallace and Clarke, The Sentencing Alternative Center, supra note 20.

The impact of Program services on active sentences differed depending on whether the offender fell within a "high risk" or "low risk" group. Id. at 29. No generalizations are possible for the purpose of making any good estimate for how much prison time might have been saved by virtue of the 196 plans reported accepted in whole or in part in the DCCPS data reported above.

[29]This is for operating cost only. Current construction costs for a dormitory type unit now average $23,000 per bed, and $59,267 per cell for an individual cell unit for medium custody. Information provided by the Management and Information Section, Department of Correction.

[30]For example, some offenders admitted to prison for a Class H, I, or J felony may have plea bargained to this crime level from more serious or violent offenses, consideration of which could lead to the conclusion that the offender should not be considered for a community-based sentence under the Community Penalties Act.

[31]Details, from DCCPS data for 1986-87, of reasons why a community penalty plan is not presented for a contacted offender are as follows:

	Number	% of Contacted Offenders	% of Offenders Who Were Refused or Withdrew
Offenders contacted	741	100%	NA
Contacted offenders who were refused or withdrew from Program services	388	52%	100%
Offenders who were refused	277	37%	71%
Offenders who withdrew	111	15%	29%
Reasons for refusal/withdrawal:			
Offender ineligible (not prison bound, too high risk, new charges)	116	16%	30%
Plea, dismissal, acquittal	102	14%	26%
Not enough time	31	4%	8%
Noncooperation of defendant or counsel ("slack attorney," program "too rough," attorney rejected plan)	50	7%	13%
Total unavailability of defendant (absconded, died, extradited)	17	2%	4%
Defendant in prison (unavailable)	18	2%	5%
Other	54	7%	14%

[32]A special data collection effort was necessary. Data routinely collected by AOC count "cases" not individual offenders. Two or more "cases" may be filed simultaneously against an individual offender. Obviously, for presentence reporting, the appropriate unit of measurement is individual offenders, not "cases."

Some data are missing (not reported). A total of 1,700 data reports should have been received from the counties, representing 17 weeks of data reporting from 100 counties. Data are missing from 3 different counties for one or more weeks each. These counties were relatively low population, low case-volume counties, and it is expected that in several instances these counties failed to report that no court was scheduled during a particular week, as opposed to failed to report affirmative case data. The

missing data represents only .3% (5 weeks) of all the weeks of data, and does not affect the adequacy of these data for making reasonable planning estimates.

[33]Details, including the method used to calculate estimated annual totals, are the same as for presentence reports, described in note 18, supra.

[34]Of the 984,043 total criminal dispositions (not including infractions) during 1986-87, 54% (527,344) were criminal motor vehicle cases.

[35]The estimate is both under- and over-inclusive. There were doubtless many "close" cases in which the judge considered, but decided against, an active sentence, and in which a presentence report may actually have been ordered. There are doubtless many cases in which no active sentence is considered, but in which a presentence report might be ordered for the purpose of fixing conditions of probation, or the length of a suspended sentence. These cases were not counted in this data collection, since no active sentence was actually given.

On the other hand, the data include many cases for which presentence reporting seems unlikely to have occurred or be considered. Such cases include DWI offenses for which some jail time is mandatory.

On the whole, however, cases in which an active sentence was given will represent the most serious misdemeanor offenses in district court. This criterion also provided personnel in the clerks' offices with a clear, identifiable basis for acceptably accurate data reporting.

[36]Carter, Robert M. Presentence Report Handbook at pp. 3-10, (National Institute of Law Enforcement and Criminal Justice, U.S. Department of Justice, 1978); ABA Standards, supra, note 24, Commentary at page 18-347 to 18-350. The literature generally attributes the trend for giving "too much" information to emphasis on rehabilitation as the purpose of sentencing, for which a great deal of information is necessary to "fully understand" the individual offender.

[37]The numbers of surveys mailed, and the numbers of responses received are as follows:

	Surveys Mailed	# and % of Responses
Superior court judges	72	50 (69.4%)
District court judges	151	76 (50.3%)
District attorneys	35	19 (54.3%)
Public defenders	7	4 (57.1%)
Private defense lawyers	290	79 (27.2%)
Probation officers	405	357 (88.1%)
Community Penalties Programs, Case Developers and Directors	35	25 (71.4%)
TOTAL	995	610 (61.3%)

Surveys were mailed in February, 1988, and data have not been computerized. Therefore, analysis here is largely qualitative, and differences in responses between groups are not identified as necessarily statistically significant.

[38]These data are not a measure of how often individual judges sentence with or without information they individually consider important to sentencing. The analysis above is based on aggregate group responses. An alternative method of analysis can be illustrated as follows.

Thirty-three of the 50 superior court judge respondents rated the importance of victim impact information 3.9 or higher (i.e., equal to or greater than the mean degree of importance given this information by superior court judges as a whole). Among these 33 judges, 55% reported that the information is usually before them for sentencing. Among the 17 judges for whom victim impact information was rated 3.0 or less, only 44% reported that the information is usually before them for sentencing.

Thus, it could well be that the judges for whom certain information is relatively more important will more often report that the information is usually before them (because to some extent judges are able to make sure that the information comes before them). It seems likely, therefore, that individual judges more often have the information they individually consider most important for sentencing than is indicated by the aggregate group percentages reported above and in Table 2, Appendix D. Our focus, however, is on the aggregate, overall picture.

[39]The provisions of present law, such as allowing the sentencing hearing to be held in another district or county, are described in Section VII.D.

[40]Wallace and Clarke, Sentencing Alternatives Center, supra note 20.

[41]The North Carolina Supreme Court has explained:

> "In our opinion it would not be in the interest of justice to put a trial judge in a straitjacket of restrictive procedures in sentencing. He should not be put in a defensive posture . . . and be subject to examination as to what he has heard and considered in arriving at an appropriate judgment. . . . Presentence investigations are favored and encouraged."

State v. Pope, 257 N.C. 326, 335 (1962).

[42]U.S. v. Tucker, 404 U.S. 443, 446 (1972). See also, Gregg v. U.S., 394 U.S. 489, 492 (1969).

[43]G.S. 15A-1334(b).

State v. Smith, 300 N.C. 71, 81-82 (1980). Presentence reports are to contain "all circumstances relevant to sentencing" and may be presented orally. G.S. 15A-1332(b).

[44]State v. Locklear, 294 N.C. 210, 219 (1978).

It is "not required that all information in a presentence report be free of hearsay." State v. Farrow, 66 N.C. App. 147, 150 (1984), disc. rev. denied, 310 N.C. 746 (1984).

[45]State v. Pope, 257 N.C. 326, 335 (1962)(decided before enactment of G.S. 15A-1334, which makes the rules of evidence inapplicable to the sentencing hearing).

[46]As one critic phrased it, we have a "system of trial by jury and sentencing by yenta." Coffee, The Repressed Issues of Sentencing: Accountability, Predictability, and Equality in the Era of the Sentencing Commission, 66 Geotn. L. R. 975, 1043 (1978).

[47]The U.S. Supreme Court has required reversal of sentences that were imposed on the basis of prior convictions when the prior convictions were Constitutionally invalid. That is, the fact that a prior conviction had occurred constituted misinformation, and the misinformation was of a "constitutional magnitude," because the prior conviction had been obtained in violation of the

Sixth Amendment right to counsel. U.S. v. Tucker, 404 U.S. 443, 447 (1972); Townsend v. Burke, 334 U.S. 736 (1948).

[48]E.g., U.S. ex rel Villa v. Fairman, 810 F.2d 715, 718-719 (7th Cir. 1987):

> "Inaccurate information standing alone does not require resentencing. . . . the Constitution does not require perfect accuracy. . . . (S)entencing judges may receive and use the widest selection of information, some of which, such as hearsay, poses risks of inaccuracy. . . . If (U.S. v. Tucker) applies to mistakes of fact that do not have 'independent constitutional significance,' . . . the federal courts would be required to retry the veracity of every statement uttered in a sentencing proceeding."

[49]State v. Pope, 257 N.C. 326, 335 (1962); G.S. 15A-1334; G.S. 15A-1333.

U.S. ex rel Villa v. Fairman, supra note 48; see Gardner v. Florida, 430 U.S. 349 (1977)(a capital case).

[50]The standardized forms prepared by DOC (see Appendix B) instruct probation officers to "please make check mark by items which have been verified."

[51]U.S. v. Weston, 448 F.2d 626, 631 (9th Cir. 1971), in which a sentence was based in part on "unsworn evidence detailing otherwise unverified statements of a faceless informer that would not even support a search warrant or an arrest." The presentence report had cited unnamed government sources for information that defendant was a major drug dealer.

U.S. v. Pugliese, 805 F.2d 1117 (2d Cir. 1986)(due process requires the judge to ascertain the reliability and accuracy of challenged information in a presentence report).

[52]ABA Standards, supra note 24, Standard 18-5.1(c), and Commentary at pages 18-342 to 18-347.

[53]G.S. 15A-1340.4. See, State v. Ysaguire, 309 N.C. 780 (1983).

[54]State v. Higson, 310 N.C. 418, 425-426 (1984); State v. Todd, 313 N.C. 110, 122 (1985). See State v. Chatham, 308 N.C. 169 (1983).

[55]The power to suspend a sentence on appropriate conditions is an inherent judicial power, not strictly dependant on the General Assembly. State v. Stallings, 316 N.C. 535 (1986).

[56]Booth v. Maryland, 107 S. Ct. 2529 (1987). The court ruled that the effect of the crime on the victim's family and the status or social standing of the deceased are irrelevant to and inappropriate bases for the decision of whether or not to impose the death penalty.

[57]State v. Clemmons, 34 N.C. App. 101, 105 (1977), disc. rev. denied, 296 N.C. 412 (1979).

[58]State v. Midyette, 87 N.C. App. 199, 203-205 (1987), disc. rev. denied, 321 N.C. 299 (1987). In Midyette, the trial judge held an in camera "session" with the rape victim, at which defense counsel was present. But counsel was not permitted to question the victim, and the defendant was not given the opportunity to refute the victim's statement. The Court urged "caution" in the conduct of such in camera hearings, but did not indicate that they are improper per se. (Discussion of this issue in Midyette was not necessary to the decision, since the Court ordered resentencing on other grounds.)

[59]G.S. Chapter 15A, Article 45, "Fair Treatment for Victims and Witnesses"; G.S. 15A-825(9); G.S. 15A-824(1); G.S. 7A-347.

[60]The Implementation and Effectiveness of the Fair Treatment for Victims and Witnesses Act, Report from the Conference of District Attorneys and Administrative Office of the Courts (January, 1988).

The statutory policy is for victim and witness assistants to be used only to assure that the services of fair treatment are provided. G.S. 7A-347. Thus, special personnel are furnished whose sole function is to, in effect, prevent victims and witnesses from being ignored or, at worst, victimized by what must often appear a monolithic and inexplicable criminal justice system. Based on press and other accounts quoted in the above Report, this system has been quite well received. Problems with implementation identified in the Report include the need for additional personnel, and the need for suitable office space in county facilities for private meetings with victims and witnesses.

Other issues mentioned in the Report include variations among the districts in the procedures used for ensuring that victims complete and return victim impact statements; and variations in the procedures followed once statements are returned, as a result of which the

statements may not always be considered by the judge. See G.S. 15A-825(9).

Finally, although the Conference of District Attorneys has allowed some variance (pursuant to G.S. 7A-347 and 7A-348), the Fair Treatment Act is limited to felonies. G.S. 15A-824(1). Standardized forms used by probation officers for presentence reports do not have specific place for victim impact information, and there would seem to be some need for coordination with probation officers' presentence reporting services in all cases.

[61]U.S. v. Tucker, 404 U.S. 443 (1972).

Since the right to counsel has been established law for so long now, it should be an extremely rare case in which this issue arises.

[62]G.S. 15A-980(a); G.S. 15A-1334(e); G.S. 15A-1340.4(e). Defendant has the burden to prove by the preponderance that the prior conviction was invalid. G.S. 15A-980(c).

[63]G.S. 15A-1340.4(e).

[64]State v. Thompson, 309 N.C. 421 (1983); State v. Carter, 318 N.C. 487 (1986); see State v. Smith, 300 N.C. 71 (1980).

[65]G.S. Chapter 7A, Subchapter XI, G.S. 7A-516 et. seq.

A "delinquent" act is essentially conduct that would, if committed by an adult, be a crime. G.S. 7A-517(12). With respect to such conduct, if the district court judge finds probable cause that a juvenile between the ages of 14 and 16 has committed a felony the court may (and for capital cases must) transfer the juvenile to superior court for trial as an adult. G.S. 7A-608.

A juvenile may come under the ambit of the Juvenile Code for a variety of reasons other than delinquent behavior, ranging from abuse and neglect, to truancy and regular disobedience of parents. See G.S. 7A-517 (13) Dependant Juvenile, (21) Neglected Juvenile, and (28) Undisciplined Juvenile. No suggestion is made here that juvenile records other than delinquency might be considered appropriate subjects for presentence reports.

With respect to adjudications of delinquency, the district courts have exclusive original jurisdiction. G.S. 7A-523. All of the procedural safeguards that apply in criminal trials of adults apply equally to delinquency cases except the right to bail, the right of self-representation, and most important the right to a jury

trial. G.S. 7A-631. The same rules of evidence apply, G.S. 7A-634, and proof beyond a reasonable doubt is required, G.S. 7A-635.

After a juvenile is adjudicated delinquent, but before the dispositional hearing, the judge must consider a "predisposition report." G.S. 7A-639; see G.S. 7A-289.6. In content and purpose, these reports are analogous to presentence reports in criminal cases.

[66]G.S. 7A-675; G.S. 7A-517(19)(defining "judge" as "any district court judge").

[67]G.S. 7A-638.

[68]G.S. 7A-676(b). A petition for expunction of a juvenile record must include an affidavit from the petitioner averring good behavior, and affidavits from two unrelated persons averring good character and reputation. The district attorney must receive notice of the petition and may file objections. G.S. 7A-676(c).

[69]G.S. 7A-677(b).

The North Carolina Supreme Court, construing similar provisions in a predecessor statute, held that the credibility of a defendant who testifies in a criminal case may be impeached by cross-examination into conduct committed as a juvenile that would have been a crime if committed by an adult. State v. Miller, 281 N.C. 70 (1972); see also, State v. Alexander, 279 N.C. 527 (1971).

The relevance of a delinquency record to a defendant's credibility during the innocence-guilt phase of a trial argues in favor of its relevance to a defendant's credibility and rehabilitative prospects during the sentencing phase.

[70]G.S. 15A-1332(c)(emphasis added). This language could, of course, simply refer to making inquiry of the defendant; and the defendant could authorize release and consideration of any juvenile record.

[71]Agenda in Pursuit of Justice: The 1983 Legislative Program of the Governor's Crime Commission, at 67 to 68 (September, 1982).

Federal presentence reports include an offender's juvenile delinquency and status offense history, unless the record has been expunged ("destroyed"). The Presentence Investigation Report, U.S. Administrative Office of the Courts, Publication 105, at pages 10-11 (1984)(stating that this is consistent with the weight of state authority).

The ABA recommends inclusion of "juvenile adjudications" in presentence reports. ABA Standards, supra note 24, Standard 18-5.1(d)(ii)(B).

[72]See G.S. 148-12. Standardized forms, completed when an offender is first received at the prison, include an "Inmate Classification Profile," a "Social History Summary," and a "Criminal History Summary."

[73]G.S. 15-206 provides in part:

> "It shall be the duty of the Secretary of Correction and the Department of Correction to cooperate with each other to the end that the purposes of probation and parole may be more effectively carried out. When requested, each shall make available to the other case records in his possession . . . ."

G.S. Chapter 148, "State Prison System," provides for a Records Section, at G.S. 148-74:

> "Case records and related materials compiled for the use of the Secretary of Correction and the Parole Commission shall be maintained in a single central file system designed to minimize duplication and maximize effective use of such records and materials. When an individual is committed to the State prison system after a period of probation, the probation files on that individual shall be a part of the combined files . . . ."

As a matter of Administrative organization, the Secretary of Correction is the head of the Department of Correction, G.S. 143B-263; divisions within the Department of Correction include the Parole Commission, the Division of Prisons, and the Division of Adult Probation and Parole, G.S. 143B-264.

[74]G.S. 15-207.

[75]G.S. 15A-1333(a) and (b). The defendant may petition the court to have the presentence report expunged from the court record.

[76]ABA Standards, supra note 24, Commentary at pages 18-336 to 18-340.

[77]N.C. Department of Correction, Division of Adult Probation and Parole.

[78]Summaries of AOC survey data on use of presentence reports in other states are in Section III, and a summary of federal practice is in Section IV. The ABA recommendation is in ABA Standards, supra note 24, Standard 18-5.1(b).

Other model codes, and the sections that urge mandatory presentence reporting, include the following: Model Sentencing and Corrections Act, National Conference of Commissioners on Uniform State Laws (1978), Section 3-203(a) (hereinafter cited as "NCCUSL, Model Sentencing Act"); Corrections, National Advisory Commission on Criminal Justice Standards and Goals, Standards 5.14 and 16.10 (hereinafter cited as "NAC, Corrections"); and Model Penal Code, American Law Institute (1985), Section 7.07(1)(hereinafter cited as "ALI, Model Penal Code").

[79]ABA Standards, supra note 24, Commentary at page 18-338. As put broadly by the ABA, a "system of structured discretion is inconsistent with uninformed discretion."

[80]Hogarth, Sentencing as a Human Process (University of Toronto Press, 1971). Among the findings of this study (and other cited in this work) were that judges process information selectively, according to personal socio-economic characteristics, attitudes, values, and philosophies. Moreover, the amount of information that a person can effectively make good use of, as a cognitive matter, is limited. The author found "little proof that the report actually lives up to the extravagant claims made for it." Id. at 247.

This work includes numerous constructive suggestions for use of presentence reports, and does not entirely disregard their potential importance. But as a whole, it draws stark, empirically based attention to the fact that presentence reporting can only be considered within the confines of a "dynamic process in which the facts of the cases, the constraints arising out the law and social system," (id. at 343) and the individual personalities involved have emphatic, complexity interacting influence.

[81]Numerous studies have attempted to identify the variables, including the nature of the offense, attributes of the offender, quality of evidence, and case-processing factors, that explain the sentences judges impose. Much of this inquiry has been in connection with the development of sentencing guidelines. The research seems inconclusive, with as much as two-thirds of the variance remaining unexplained. However, the seriousness of the offense and the offender's prior record consistently emerge as key determinants. See generally, Blumstein, Alfred et. al., Research on Sentencing: The Search for Reform (1983).

[82]E.g., New York Criminal Procedure Law, Section 390.20(1) and (2); model codes other than ABA, supra, note 78.

[83]California reports this approach, and it is recommended in ABA Standards, supra note 24, Standard 18-5.1(b).

[84]Federal Rules of Criminal Procedure, Rule 32(c)(1); Texas Code of Criminal Procedure, Article 42.12, Section 4(b).

A variation on this approach exists in Idaho, where a presentence report is, by court rule, described as discretionary, but the court must explain on the record why an investigation is not ordered in felony cases. Idaho Court Rules, Rule 32(a).

[85]G.S. 15A-2000 et. seq.

[86]Texas Code of Criminal Procedure, Article 42.12, Section 4(a) appears to require a report in every criminal case, but the requirement can be waived or overridden under Section 4(b).

[87]See AOC survey data on other states, summarized in Section III. The ABA does not recommend mandatory presentence reporting for all felonies per se; it does recommend mandatory reporting for all offenses punishable by more than one year incarceration, a requirement that would include all felonies in North Carolina (G.S. 14-1.1). ABA Standards, supra note 24, Standard 18-5.1(b). Other model codes do urge a mandatory requirement for felonies, as cited in note 78, supra.

[88]G.S. 14-1.

[89]Hawaii (under age 22); model codes that would require a presentence report when defendant is under a certain age, or a "minor," are listed in note 78, supra.

[90]G.S. 148-49.14; G.S. 15A-1340.4(a).

[91]G.S. 7A-608.

[92]G.S. 7A-639; see G.S. 7A-289.6.

[93]ABA Standards, supra note 24, Commentary at page 18-341.

[94]G.S. 15A-1021; 15A-1340.4(a).

[95]G.S. 15A-1332; ABA Standards, supra note 24, Standards 18-5.2 and 18-5.6; other codes, supra, note 78:

NCCUSL, Model Sentencing Act, Section 3-203(a); NAC, Corrections, Standard 5.15(1). Of the 38 states that responded to this question on the AOC survey, reports are prepared only after conviction in 25 states, and only 5 states reported that a report could be prepared before conviction over the defendant's objection.

[96]See generally, Shapiro and Clement, Presentence Information in Felony Cases in the Massachusetts Superior Court, 10 Sulfolk U. L.R. 49 (1975); Note, The Presentence Report: An Empirical Study of its Use in the Federal Courts, 58 Geotn. L.R. 451 (1970).

In addition to Massachusetts, the following states indicated, on the AOC survey, that presentence reports may be ordered before conviction without defendant's consent: New Hampshire (when defendant pleads guilty), Minnesota, Oregon, and Iowa.

[97]G.S. 15A-1334(a) and (c); State v. Sampson, 34 N.C. App. 305 (1977), disc. rev. denied, 294 N.C. 185 (1978).

[98]See generally, ABA Standards, supra note 24, Commentary at page 18-358.

[99]Federal Rule of Criminal Procedure 32(c). Preconviction disclosure of a presentence report is allowed under current North Carolina law, G.S. 15A-1022(c)(3), which allows use of a presentence report for finding the necessary factual basis to support acceptance of a guilty plea.

[100]Model Codes, supra, note 78: ABA Standards, Section 18-5.1(a); NCCUSL, Model Sentencing Act, Sections 3-204 and 3-205; ALI, Model Penal Code, Sections 7.07(1) to (7); NAC, Corrections, Sections 5.14 and 16.10. A written report seems clearly contemplated in the Federal Rule, Fed. Rule Crim. Proc. 32(c), and is clearly the practice, see The Presentence Investigation Report, Publication 105, U.S. AOC (1984).

[101]Notes 15 and 16 supra.

[102]Only two states indicated on the AOC survey that reports are prepared by other than probation officers. Washington State, somewhat ambiguously, indicated that reports are prepared by the "Department of Correction." Idaho reports the "presentence investigators" prepare the reports but that if such an investigator is not available, then probation officers do so. In addition, Michigan qualified its answer (that "only" probation officers prepare reports) by noting that on rare occasions some district courts contract with private vendors for preparation of presentence reports. No other state

reported any such privatization of this function. Several probation officers in the AOC survey expressed the view that their supervisory duties are assisted by the familiarity they gain with the defendant from preparation of a report.

[103]ABA Standards, supra note 24, Commentary for Standard 18-5.1(d) at pages 18-347 to 18-348.

[104]Probation officers were asked what uses are made of presentence reports after sentencing. Response rates were as follows:

	Number	% of All Probation Officer Respondents (N = 357)
Probation supervision	341	95.5%
Parole evaluations	169	47.3%
Parole supervision	207	58.0%
To prepare subsequent reports for the same offender	240	67.2%
Other	45	12.6%

APPENDIX A

1987 SESSION LAWS, CHAPTER 19: AOC TO STUDY USE OF PRESENTENCE REPORTS BY JUDGES

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION
RATIFIED BILL

CHAPTER 19
HOUSE BILL 49

AN ACT TO AUTHORIZE THE ADMINISTRATIVE OFFICE OF THE COURTS TO CONDUCT A STUDY OF PRESENTENCE REPORTS.

The General Assembly of North Carolina enacts:

Section 1. The Administrative Office of the Courts shall conduct a study concerning the use of presentence reports by judges. Issues to be addressed in the study include the current use of presentence reports, when the presentence report should be prepared, who should prepare the presentence report, the contents of the presentence report, and whether the presentence report should be mandatory for any, or all, offenses.

Sec. 2. The Administrative Office of the Courts shall make a written report to the General Assembly prior to the convening of the 1988 Session of the 1987 General Assembly.

Sec. 3. Nothing in this act shall be construed to obligate the General Assembly to make additional appropriations to implement the provisions of this act.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of March, 1987.

ROBERT B. JORDAN III
Robert B. Jordan III
President of the Senate

LISTON B. RAMSEY
Liston B. Ramsey
Speaker of the House of Representatives

APPENDIX B

DOC STANDARDIZED PRESENTENCE REPORT FORMS

DAPP-80
10/84

PRE-SENTENCE INVESTIGATIVE REPORT I

*****

COUNTY OF _____ DATE PSI ORDERED: _____

FILE NO/S. _____ DATE PSI DUE: _____

JUDGE _____ DATE PSI PREPARED: _____

DISTRICT ATTORNEY _____

DEFENSE ATTORNEY _____ APPOINTED _____ RETAINED _____

COURT NAME _____ DOB: _____ AGE _____ RACE/SEX _____

TRUE NAME _____ ALIAS _____ POB: _____

OFFENSE: _____

ADDRESS _____ TELEPHONE ( ) _____

LIVES WITH _____
(Name & Relationship)

OWNS ( ) House ( )

RENTS ( ) Apt. ( ) Room ( ) How Long at this address _____

MARTIAL STATUS _____ NO. OF DEPENDANTS _____

OCCUPATION _____ SOC. SEC. NO. _____ DRIVER'S LIC. NO. _____ STATE _____

EMPLOYER: _____ How Long Employed _____

TOTAL MONTHLY INCOME (Include all Sources) _____

PREVIOUS EMPLOYER: _____ How Long Employed _____

REASON FOR LEAVING: _____

OTHER JOB SKILLS: _____

EDUCATION _____

MILITARY SERVICE: (Branch) _____ (Dates) _____ Type of Discharge _____

CURRENT PHYSICAL CONDITION _____

DRUG USE ( ) MENTAL/EMOTIONAL PROBLEMS ( ) ALCOHOL USE ( ) Give details under OTHER INFORMATION

** **PREVIOUS CONVICTIONS:** (Use reverse side if needed)

Date	Place	Court	Offense	Disposition

* **OTHER INFORMATION:** (Home, Environment, Reputation, Background, Attitude, Religion, Leisure time activities, Associates)

_____

_____

_____

_____

_____

_____

_____
Probation/Parole Officer

** **NOTE:** Please make check mark by items which have been verified.

* (Use reverse side if needed)

DAPP-81
10-86

PRE-SENTENCE INVESTIGATIVE REPORT II

****

COUNTY OF _____ DATE PSI ORDERED: _____

FILE NO/S. _____ DATE PSI DUE: _____

JUDGE _____ DATE PSI PREPARED: _____

DISTRICT ATTORNEY _____

DEFENSE ATTORNEY _____ APPOINTED _____ RETAINED _____

COURT NAME _____ DOB: _____ AGE _____ RACE/SEX _____

TRUE NAME _____ ALIAS: _____ POB: _____

PRESENT ADDRESS _____ HOW LONG _____

TELEPHONE ( ) _____ LIVES WITH _____
(Name and relationship)

OWNS [ ] House [ ] Directions to Residence _____

RENTS [ ] Apt. [ ] Room [ ] _____

PREVIOUS ADDRESS _____

MARITAL STATUS _____ NO. DEPENDANTS _____

NAMES OF IMMEDIATE FAMILY (List all, living and deceased.)

Name	Relation-ship	Age	Present Address	Occupation

(Note any criminal activity of family member with "c" before name.)

OCCUPATION: _____ SOC. SEC. NO. _____ DRIVER'S LIC. NO. _____ STATE _____

EMPLOYER: _____ How Long Employed _____

Monthly Income _____ No. Hours Worked _____

Employment Status: _____

_____

OtherIncome/Sources: _____

PREVIOUS EMPLOYER: _____ How Long Employed _____

Reason for Leaving _____

Other Job Skills _____

_____

EDUCATION: (Last School Attended) _____

Last Grade Completed _____ Graduated _____ Year _____

Reason Left School _____

MILITARY SERVICE: (Branch) _____ (Dates) _____ Type of Discharge _____

CURRENT PHYSICAL CONDITION: _____

_____

DRUG USE [ ] MENTAL/EMOTIONAL PROBLEMS [ ] ALCOHOL USE [ ] Give details of any usage and treatment received _____

RELIGIOUS PREFERENCE _____ Extent of Involvement _____

** **PREVIOUS CONVICTIONS:**

Date	Place	Court	Offense	Dispositon

OFFENSE: (Use DAPP-81a for Additional File Nos.)

Date of Offense: _____ Arresting Officer _____

Co-Defendants and Disposition _____

Complainant _____ Address _____

Defendant's Version of Crime: _____

Inv. Officer's Version: _____

* **OTHER INFORMATION:** (Reputation, Attitude, Leisure time activities, Associates, etc.)

* **COMMENTS & RECOMMENDATIONS:** (Community Service and/or Treatment Proposals, etc.)

_____
Probation/Parole Officer

** **NOTE:** Please make check mark by items which have been verified.

* (Use Additional Sheet if needed.)

DAPP-82
10/84

PRE-SENTENCE INVESTIGATIVE REPORT III

*****

COUNTY OF _____ DATE PSI ORDERED: _____

FILE NO/S. _____ DATE PSI DUE: _____

JUDGE _____ DATE PSI PREPARED: _____

DISTRICT ATTORNEY _____

DEFENSE ATTORNEY _____ APPOINTED _____ RETAINED _____

1. **IDENTIFYING DATA**

COURT NAME _____ DOB: _____ AGE _____ RACE/SEX _____

TRUE NAME _____ ALIAS _____ POB: _____

PRESENT ADDRESS _____ HOW LONG _____

LIVES WITH _____ TELEPHONE ( ) _____
(Name & Relationship)

MARTIAL STATUS _____ NO. OF DEPENDANTS _____

SOC. SEC. NO. _____ DRIVER'S LIC. NO. _____ STATE _____

2. **OFFENSE** (Use Additional Page 1 for Item 2 for each File No.)

Crime _____ File No. _____

Date of Offense _____ Arresting Officer _____

Co-Defendants and Disposition _____

Complainant _____ Address _____

A. **Defendant's Version of Crime:**

B. **Complainant's Version of Crime:**

C. **Investigating Officer's Version of Crime:**

D. **Other Information Regarding Crime:**

3. **PREVIOUS CONVICTIONS**

Date	Place	Court	Offense	Disposition

4. **ADDITIONAL DATA** (Detainers, Charges Pending, Previous Probation/Parole, Institutional History, Present Status)

5. **PERSONAL AND FAMILY DATA**

Previous Addresses _____ How Long _____

Present Address _____ Lives With _____

Owns ( ) House ( )

Rents ( ) Apt. ( ) Room ( )

Family Background (Includes home, neighborhood, interests, support of family, associates, attitude of family members toward defendant, home atmosphere, etc.)

NAMES OF IMMEDIATE FAMILY (List all living and deceased)

Name	Relation-ship	Age	Present Address	Occupation

(Note any criminal activity of family member with "c" before name.)

MARITAL (Present and previous marriages, including cohabitation)

Name of Spouse	Age	Place & Date of Marriage	No. of Children	Outcome of Marriage

List any problems with marriage(s)

Names of Children (Including those from previous marriages)	Age	Address	Custody	If under 18 yrs. of Age Support Yes or No

6. **EDUCATION** _____
(School and Address)

_____

GED _____ Other Training Recieved _____

Summary of School Data (Behavior, Academic Standing, Desire to Return, Present Status)

7. **EMPLOYMENT**

Occupation _____ Employer _____

Address _____ How Long Employed _____

Income _____ Beginning _____ Present _____ No of Hrs. Worked _____

Supervisor _____ Telephone No. ( ) _____

Employment Status _____

_____

Previous Employer _____ Beg. Income _____ Ending _____

How Long Employed _____ Reason for Leaving _____

Previous Employer _____ Beg. Income _____ Ending _____

How Long Employed _____ Reason for Leaving _____

Other Job Skills _____

_____

8. **HEALTH**

_____

Physical Description (Height, weight, scars, illnesses being treated; health problems, all past and present medication, name of physician)

Drug Abuse, Alcohol, Narcotics (Age use began, frequency/cost, type of drug, past and present treatment)

Mental and Emotional (Self evaluation, personality traits, disorders, treatment)

9. **MILITARY SERVICE**

Branch _____ Dates _____ Type of Discharge _____

Skills Acquired _____

Summary of Military Data _____

_____

_____

_____

10. **RELIGIOUS PREFERENCE** _____

Extent of Involvement _____

_____

_____

11. **FINANCIAL CONDITION**

Net Income per month (All sources) _____

Total expenses Per Month _____ Difference _____

Monthly Expenses:

Rent _____

Utilities _____

Food _____

Clothing _____

Transportation (Payments, gas, oil, insurance) _____

Medical _____

Support Payments _____

Other Expense (Charge accounts, insurance, school expenses, etc.)

_____

_____

_____

_____

_____

_____

_____

_____

Assets:

Savings _____

Value of any Stocks, Bonds, Life Insurance Policies, or other Investments _____

_____

Value of any real estate owned _____

Value of any vehicle(s) owned _____

Value of any equipment owned _____

Value of any personal property owned (furniture, etc.) _____

Value of anything else owned _____

12. **RECOMMENDATIONS** (Community Service and/or Treatment Proposals, etc.)

_____
Probation/Parole Officer

* **NOTE:** Please make check mark by items which have been verified.

APPENDIX C

DOC DATA ON THE NUMBERS OF PRESENTENCE REPORTS SUBMITTED

PRESENTENCE REPORTS SUBMITTED BY PROBATION OFFICERS IN NORTH CAROLINA
SUPERIOR COURT -- ESTIMATED ANNUAL STATE TOTALS*

Superior Court, by case-type and offender-age		SUBMITTED DIRECTLY TO JUDGE						PSI 3 for PSD (Written)	Total Written Incl. PSD	GRAND TOTAL (100%)
		Oral	------ Written ------ PSI 1	PSI 2	PSI 3	Total Written to Judge	Grand Total to Judge			
FELONIES	Under 21	600 55%	99 9%	296 27%	73 7%	468 43%	1,068 97%	30 3%	498 45%	1,098 100%
	21 and Older	1,617 71%	140 6%	311 14%	136 6%	587 26%	2,204 97%	72 3%	659 29%	2,276 100%
	Total Felonies	2,217 66%	239 7%	607 18%	209 6%	1,055 31%	3,272 97%	102 3%	1,157 34%	3,374 100%
MISDEMEANORS	Under 21	192 75%	21 8%	37 14%	1 0%	59 23%	251 98%	5 2%	64 25%	256 100%
	21 and Older	290 86%	22 7%	8 2%	18 5%	48 14%	338 100%	0	48 14%	338 100%
	Total mis-demeanors	482 81%	43 7%	45 8%	19 3%	107 18%	589 99%	5 1%	112 19%	594 100%
TOTAL	Under 21	792 58%	120 9%	333 8%	74 5%	527 39%	1,319 97%	35 3%	562 42%	1,354 100%
	21 and Older	1,907 73%	162 6%	319 12%	154 6%	635 24%	2,542 97%	72 3%	707 27%	2,614 100%
	TOTAL SUPERIOR	2,699 68%	282 7%	652 16%	228 6%	1,162 29%	3,861 97%	107 3%	1,269 32%	3,968 100%

PRESENTENCE REPORTS SUBMITTED BY PROBATION OFFICERS IN NORTH CAROLINA, DISTRICT COURTS, AND TOTAL SUPERIOR AND DISTRICT COURT -- ESTIMATED ANNUAL STATE TOTALS*

Court and offender-age		SUBMITTED DIRECTLY TO JUDGE						PSI 3 for PSD (Written)	Total Written Incl. PSD	GRAND TOTAL (100%)
		Oral	------ Written ------ PSI I	PSI 2	PSI 3	Total Written to Judge	Grand Total to Judge			
DISTRICT	Under 21	3,906 79%	383 8%	586 12%	77 1%	1,046 21%	4,952 99.9%	6 .1%	1,052 21%	4,958 100%
	21 and Older	6,160 80%	481 6%	924 12%	88 1%	1,493 19%	7,653 99.6%	31 .4%	1,524 20%	7,684 100%
	Total District	10,066 80%	864 7%	1,510 12%	165 1%	2,539 20%	12,605 99.7%	37 .3%	2,576 20%	12,642 100%
BOTH COURTS	Under 21	4,698 74%	503 8%	919 15%	151 2%	1,573 25%	6,271 99%	41 1%	1,614 26%	6,312 100%
	21 and Older	8,067 78%	643 6%	1,243 12%	242 2%	2,128 21%	10,195 99%	103 1%	2,231 22%	10,298 100%
	GRAND TOTAL	12,765 77%	1,146 7%	2,162 13%	393 2%	3,701 22%	16,466 99%	144 1%	3,845 23%	16,610 100%

*Estimated annual totals are based on actual data collected during November and December, 1987, and January and February, 1988. Details regarding calculation of annual totals, and an explanation of data categories on this table, are given on pages ____.

APPENDIX D

NORTH CAROLINA OPINION SURVEY DATA--TABLES

TABLE 1

Mean Scores and Rank (in Parenthesis) Assigned by Respondent Groups to the Importance of General Categories of Information for Sentencing

Scale: 0 = "not at all important"
5 = "extremely important"

	Superior Court Judges	District Court Judges	District Attorneys	Public Defenders	Private Defense Lawyers
Defendant's adult conviction record	4.96 (1)	4.7 (1)	4.9 (1)	4.0 (4)	4.5 (1)
Investigating Officer's version of the crime	4.0 (2)	4.1 (3)	4.5 (2)	2.9 (10)	3.4 (6)
Impact on victim	3.9 (3)	4.2 (2)	4.0 (4)	2.7 (11)	3.1 (8)
Complainant's version of the crime	3.6 (4)	3.9 (4)	4.4 (3)	4.4 (1)	3.6 (4)
Employment history	3.6 (4)	3.3 (7)	2.6 (7)	4.3 (2)	3.5 (5)
Physical and mental health	3.5 (5)	3.6 (6)	2.7 (6)	3.6 (6)	3.7 (3)
Information on alternatives to prison	3.3 (6)	3.7 (5)	2.4 (9)	4.0 (4)	4.3 (2)
Defendant's education	3.1 (7)	2.9 (9)	2.3 (10)	3.9 (5)	3.3 (7)
Family history & background	3.0 (8)	2.8 (10)	2.1 (11)	4.2 (3)	3.5 (5)
Information about codefendants	3.0 (8)	3.1 (8)	2.9 (5)	3.0 (9)	3.1 (8)
Defendant's version of the crime	2.8 (9)	3.1 (8)	2.5 (8)	3.1 (8)	3.4 (6)
Sentencing recommendation	2.4 (10)	3.1 (8)	2.0 (12)	2.3 (12)	3.1 (8)
Financial assets and liabilities	2.2 (11)	2.7 (11)	1.9 (13)	3.3 (7)	2.5 (9)

TABLE 2

Categories of Information Reported by Judges to "Usually" Be Before Them for Sentencing, Regardless of Source

	SUPERIOR COURT JUDGES			DISTRICT COURT JUDGES		
		Numbers			Numbers	
	% Yes	Yes	No	% Yes	Yes	No
Defendant's adult conviction record	100%	49	0	89.2%	66	8
Investigating Officer's version of the crime	95.8%	46	2	91.9%	68	6
Impact on victim	54.2%	26	22	76.7%	56	17
Complainant's version of the crime	87.5%	42	6	93.2%	69	5
Employment history	85.7%	42	7	59.5%	44	30
Physical and mental health	77.6%	38	11	50.7%	37	36
Information on alternatives to prison	62.5%	30	18	43.8%	32	41
Defendant's education	93.9%	46	3	73.0%	54	20
Family history & background	71.4%	35	14	39.5%	30	46
Information about codefendants	81.6%	40	9	64.9%	48	26
Defendant's version of the crime	93.9%	46	3	97.3%	72	2
Sentencing recommendation	38.8%	19	30	35.6%	26	47
Financial assets and liabilities	44.9%	22	27	37.8%	28	46

TABLE 3

Extent to Which Judges Consider Presentence Reports From Probation Officers to Be an Important (Even if Not the Only) Source of the Information That is "Usually" Before Them for Sentencing

	SUPERIOR COURT JUDGES			DISTRICT COURT JUDGES		
		Numbers			Numbers	
	% Yes	Yes	No	% Yes	Yes	No
Defendant's adult conviction record	26.1%	12	34	51.6%	33	31
Investigating Officer's version of the crime	13.3%	6	39	8.8%	6	62
Impact on victim	18.8%	6	26	29.8%	17	40
Complainant's version of the crime	11.9%	5	37	10.3%	7	61
Employment history	37.2%	16	27	46.9%	23	26
Physical and mental health	38.5%	15	24	43.2%	19	25
Information on alternatives to prison	38.2%	13	21	23.8%	10	32
Defendant's education	37.0%	17	29	40.7%	22	32
Family history & background	41.0%	16	23	47.6%	20	22
Information about codefendants	7.9%	3	35	21.6%	11	40
Defendant's version of the crime	13.6%	6	38	12.7%	9	62
Sentencing recommendation	42.9%	12	16	35.1%	13	24
Financial assets and liabilities	21.9%	7	25	35.0%	14	26

TABLE 4

Respondents' Views Regarding the Case Categories for Which Presentence Reports Should Be Mandatory IF the General Assembly were to Make Presentence Reports Mandatory

Frequency of Responses,* By Broad Categories of Cases

	All Felonies Except Capital		All Misdemeanors		When Def. Pleads Guilty		When Def. is 1st Offender	
	%	(N)	%	(N)	%	(N)	%	(N)
Superior Court Judges (50)	50.0%	(25)	4.0%	(2)	16.0%	(8)	46.0%	(23)
District Court Judges (76)	67.1%	(51)	7.9%	(6)	14.5%	(11)	21.1%	(16)
District Attorneys (19)	31.6%	(6)	5.3%	(1)	10.5%	(2)	21.0%	(4)
Defense Lawyers (public & private) (83)	81.9%	(68)	1.2%	(1)	14.5%	(12)	37.3%	(31)
Probation Officers (357)	71.1%	(254)	4.8%	(17)	22.4%	(80)	28.3%	(101)
ALL RESPONDENTS (585)	69.1%	(404)	4.6%	(27)	19.3%	(113)	29.9%	(175)

	Offenses Punishable By a Certain Sentence		When Def. is Under a Certain Age		Some Felonies		Some Misdemeanors	
	%	(N)	%	(N)	%	(N)	%	(N)
Superior Court Judges (50)	22.0%	(11)	34.0%	(17)	30.0%	(15)	14.0%	(7)
District Court Judges (76)	31.6%	(24)	39.5%	(30)	7.9%	(6)	36.8%	(28)
District Attorneys (19)	15.8%	(3)	47.4%	(9)	31.6%	(6)	21.0%	(4)
Defense Lawyers (public & private) (83)	22.9%	(19)	47.0%	(39)	18.1%	(15)	20.5%	(17)
Probation Officers (357)	25.8%	(92)	33.9%	(121)	38.7%	(138)	41.7%	(149)
ALL RESPONDENTS (585)	25.5%	(149)	36.9%	(216)	30.8%	(180)	35.0%	(205)

*Percentages are of all who responded to the survey, as indicated for each group in parenthesis.

TABLE 5

Respondents' Views Regarding Whether Presentence Reports From Probation Officers Have "An Impact" on Whether a Defendant Receives an Active Sentence (Prison or Jail)

	Yes, Presentence Reports Have Such Impact		No, Presentence Reports Do Not Have Such Impact	
	%	(N)	%	(N)
Superior Court Judges	68.0%	(34)	32.0%	(16)
District Court Judges	84.0%	(63)	16.0%	(12)
District Attorneys	68.4%	(13)	31.6%	(6)
Defense Lawyers (public & private)	93.6%	(73)	6.4%	(5)
Probation Officers	86.1%	(298)	13.9%	(48)
ALL RESPONDENTS	84.7%	(481)	15.3%	(87)

TABLE 6

Numbers and Percentages of Respondents Who Suggested
(A) Changes in the Types of Presentence Reports;
(B) Information That Could Be Given in Addition to Present Contents; and
(C) Information That is Being Given But Could Be Omitted

	(A) Changes to the Types of Presentence Reports?			(B) Additional Information?			(C) Omitted From Presentence Reports?		
		Numbers			Numbers			Numbers	
	% Yes	Yes	No	% Yes	Yes	No	% Yes	Yes	No
Superior Court Judges	16.7%	8	40	14.6%	7	41	18.8%	9	39
District Court Judges	4.2%	3	69	16.9%	12	59	17.1%	12	58
District Attorneys	10.5%	2	17	10.5%	2	17	15.8%	3	16
Defense Lawyers (public & private)	34.6%	27	51	31.3%	25	55	19.0%	15	64
Probation Officers	21.3%	75	277	21.5%	76	278	13.4%	47	305
ALL RESPONDENTS	20.2%	115	454	21.3%	122	450	15.1%	86	482

TABLE 7

Respondent's Views on When Presentence Reports Should Be Prepared

	Only After Conviction, Unless Defendant Moves For an Earlier Investigation (Present Law)		Before or After Conviction, in Judge's Sole Discretion, With or Without Defendant's Motion		Other	
	%	(N)	%	(N)	%	(N)
Superior Court Judges	51.1%	(24)	40.4%	(19)	8.5%	(4)
District Court Judges	61.0%	(47)	32.5%	(25)	6.5%	(5)
District Attorneys	66.7%	(12)	27.8%	(5)	5.5%	(1)
Defense Lawyers (public & private)	68.6%	(59)	18.6%	(16)	12.8%	(11)
Probation Officers	50.4%	(185)	42.8%	(157)	6.8%	(25)

TABLE 8

Numbers and Percentages of Respondents
Who Report Having Experience With
Community Penalty Plans

	YES		NO	
	%	(#)	%	(#)
Superior Court Judges	75.5%	(37)	24.5%	(12)
District Court Judges	16.7%	(12)	83.3%	(60)
District Attorneys	52.6%	(10)	47.4%	(9)
Public Defenders	75.0%	(3)	25.0%	(1)
Private Attorneys	31.6%	(25)	68.4%	(54)

TABLE 9

Should a Judge Be Authorized By Statute to Order a Community Penalties Program to Prepare a Community Penalty Plan for Qualified Defendants*

	YES		NO	
	%	(#)	%	(#)
Superior Court Judges	72.2%	(26)	27.8%	(10)
District Court Judges	83.3%	(10)	16.7%	(2)
District Attorneys	20.0%	(2)	80.0%	(8)
Defense Lawyers	89.3%	(25)	10.7%	(3)
Community Penalties Program Personnel	64.0%	(16)	36.0%	(9)

*Qualified defendants under G.S. 143B-502 are nonviolent misdemeanants and nonviolent Class H, I, and J offenders who are likely to receive an active prison sentence if convicted. These limitations do not apply to the Buncombe County Program, where judges may already order a plan prepared for any defendant.

TABLE 10

Numbers and Percentages of Respondents Who Recommended That Community Penalty Plans Be Mandatory for Some Category of Case or Offender

	Yes, Recommend Mandatory		No, Should Not Be Mandatory	
	%	(N)	%	(N)
Superior Court Judges	16.2%	(6)	83.8%	(31)
District Court Judges	33.3%	(4)	66.7%	(8)
District Attorneys	0%	(0)	100%	(10)
Defense Lawyers	39.3%	(11)	60.7%	(17)
Community Penalties Program Personnel	40.0%	(10)	60.0%	(15)

TABLE 11

Respondents' Views on Whether Community Penalty Plans Have an Impact on Whether or Not a Defendant Receives an Active Prison or Jail Sentence

	Yes, Impact		No Impact	
	%	(N)	%	(N)
Superior Court Judges	73.0%	(27)	27.0%	(10)
District Court Judges	81.8%	(9)	18.2%	(2)
District Attorneys	80.0%	(8)	20.0%	(2)
Defense Lawyers	92.9%	(26)	7.1%	(2)
Community Penalties Program Personnel	100%	(25)	0%	(0)

TABLE 12

Numbers and Percentages of Respondents Who Suggested Items or Categories of Information That (A) Are Not Presently Being Given in Community Penalty Plans But That Could and Should Be Given in Addition, and (B) Are Being Given But Could Be Omitted

	(A) Additional Information			(B) Omit Information		
		Numbers			Numbers	
	% Yes	Yes	No	% Yes	Yes	No
Superior Court Judges	13.9%	5	31	17.1%	6	29
District Court Judges	11.1%	1	8	0%	0	8
District Attorneys	33.3%	3	6	42.9%	3	4
Defense Lawyers	15.4%	4	22	0%	0	24
Community Penalties Program Personnel	28.0%	7	18	16.0%	4	21