

**2013 DRAFTING REQUEST**

**Bill**

Received: 8/6/2013 Received By: phurley  
Wanted: As time permits Same as LRB:  
For: Patricia Strachota (608) 264-8486 By/Representing: Trevor  
May Contact: Drafter: phurley  
Subject: Criminal Law - sentencing Addl. Drafters:  
Criminal Law - victims Extra Copies:

Submit via email: YES  
Requester's email: Rep.Strachota@legis.wisconsin.gov  
Carbon copy (CC) to:

**Pre Topic:**

No specific pre topic given

**Topic:**

Victim access to presentence reports

**Instructions:**

See attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	phurley 8/7/2013			_____			
/1	phurley 11/17/2013	wjackson 8/23/2013	jfrantze 8/26/2013	_____	srose 8/26/2013		
/2		wjackson 11/26/2013	rschluet 11/26/2013	_____	lparisi 11/26/2013	sbasford 12/20/2013	

FE Sent For:

*No +  
Needed*

<END>

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May Contact: Drafter: **phurley**  
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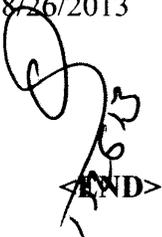
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FE Sent For:		1/2 Wly 11/26					

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/?	phurley	1Wlj 8/23		8/23			

FE Sent For:

<END>

## Hurley, Peggy

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**From:** Sappenfield, Anne  
**Sent:** Wednesday, August 07, 2013 12:38 PM  
**To:** Ford, Trevor; Hurley, Peggy  
**Subject:** RE: bill draft request

Sounds good.

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**From:** Ford, Trevor  
**Sent:** Wednesday, August 07, 2013 12:37 PM  
**To:** Sappenfield, Anne; Hurley, Peggy  
**Subject:** RE: bill draft request

I believe it will cover the very minor concerns that our DA expressed on this portion. Thinking about it more and what Peggy had mentioned, I do think dropping the "detrimental" part would be a good idea.

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**From:** Sappenfield, Anne  
**Sent:** Wednesday, August 07, 2013 12:26 PM  
**To:** Hurley, Peggy  
**Cc:** Ford, Trevor  
**Subject:** RE: bill draft request

I see what you're saying. Trevor—based on your conversation with the DA, do you think the compromising an investigation or prosecution will cover his concerns?

Anne

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**From:** Hurley, Peggy  
**Sent:** Wednesday, August 07, 2013 12:19 PM  
**To:** Sappenfield, Anne  
**Cc:** Ford, Trevor  
**Subject:** RE: bill draft request

I will do that. I see no issues with allowing the DA to cut off access if viewing the report could compromise a current investigation or prosecution.

However, I think there is some tension between stating that a victim has a general right to see the report but then allowing the DA to forbid it if the DA decides that it would be "detrimental" to the victim. I can draft it that way, but I wanted to raise the issue with you. Please let me know if you would like to discuss this further.

Peggy

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**From:** Sappenfield, Anne  
**Sent:** Wednesday, August 07, 2013 12:13 PM  
**To:** Hurley, Peggy

**Cc:** Ford, Trevor  
**Subject:** RE: bill draft request

Hi Peggy,

Thank you for your comment. Very helpful. Rep. Strachota would like to require the DA to permit the victim to view portions of the presentence investigation report unless the DA determines that permitting the victim to view those portions of the report would be detrimental to the victim or would compromise a current investigation or prosecution. Also add a provision to the victims' bill of rights.

Let either me or Trevor know if you have questions.

Thanks!  
Anne

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**From:** Hurley, Peggy  
**Sent:** Tuesday, August 06, 2013 3:12 PM  
**To:** Sappenfield, Anne  
**Cc:** Ford, Trevor  
**Subject:** RE: bill draft request

Anne and Trevor,

I'll enter this request today and get a draft out as quickly as I can.

If you want this bill to have more of a victims' rights focus, I think it makes sense to amend s. 950.04 (1v), as well, to add this viewing of the PSI to the list of rights a victim has. If we do add this to the list of victims' rights, then perhaps s. 972.15 (4m) should say "the district attorney shall permit a victim . . ."

However, if you want to keep it at the discretion of the DA and not make it a right every victim necessarily has, then amending 972.15 (4m) as Anne suggests makes more sense. Your thoughts?

Peggy

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**From:** Sappenfield, Anne  
**Sent:** Tuesday, August 06, 2013 3:05 PM  
**To:** Hurley, Peggy  
**Cc:** Ford, Trevor  
**Subject:** bill draft request

Hi Peggy,

Rep. Strachota would like to amend the current statute relating to presentence investigations in order to permit a victim of a crime to view the portions of the PSI report relating to any sentencing recommendations and information relating to the impact on the victim. Here is what I came up with, but feel free to make any improvements:

**972.15 (4m)** The district attorney and the defendant's attorney are entitled to have and keep a copy of the presentence investigation report. If the defendant is not represented by counsel, the defendant is entitled to view the presentence investigation report but may not keep a copy of the report. A district attorney or defendant's attorney who receives a copy of the report shall keep it confidential. A district attorney may permit a victim to view the portions of the report

making any recommendations regarding the length or conditions of the sentence and that contain information regarding the impact of the crime on the victim under sub. (2m). A defendant or victim who views the contents of a presentence investigation report shall keep the information in the report confidential.

Trevor in Rep. Strachota's office is working on this.

Thank you, and let me or Trevor know if you have any questions.

Anne

*Anne Sappenfield*  
Senior Staff Attorney  
WI Legislative Council  
(608) 267-9485



WLJ

## 2013 BILL

S-7

Gen Cat

1

AN ACT ...; relating to: allowing a victim of a crime to view a presentence

2

investigation report

### *Analysis by the Legislative Reference Bureau*

Under current law, if a person is convicted of a crime, the court may order a presentence investigation report be prepared. Generally, the presentence investigation report is confidential. However, under current law, the district attorney and the defendant's attorney are entitled to have and keep a copy of the presentence investigation report. If the defendant is not represented by counsel, the defendant is entitled to view the presentence investigation report but may not keep a copy of the report. A district attorney or defendant's attorney who receives a copy of the report shall keep it confidential. A defendant who views the contents of a presentence investigation report shall keep the information in the report confidential.

STE

Also under current law, a victim of a crime has certain rights, including the right to have the person preparing a presentence investigation report make a reasonable attempt to contact the victim in order to determine the economic, physical and psychological effect of the crime on the victim. The victim does not have the right to view the presentence investigation report.

Under this bill, a victim of a crime has a general right to view the contents of a presentence investigation report relating to the crime. Under the bill, a district attorney may prohibit or delay the victim from viewing a presentence investigation report if he or she determines that permitting the victim to view the report may compromise an ongoing investigation or prosecution. Under the bill, a victim who



## Hurley, Peggy

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**From:** Ford, Trevor  
**Sent:** Friday, November 15, 2013 12:59 PM  
**To:** Hurley, Peggy  
**Subject:** RE: psi

Peggy,

You can go ahead and draft it how you had suggested on the 11<sup>th</sup>. You said that it does accomplish the things we want, so as long as that's the case we are fine with it. We just want to get the bill moving. Thanks for all your help Peggy.

"972.15 (4r) The victim of the crime is entitled to view all sentencing recommendations included in the presentence investigation report, including any recommendations under sub. (2b) or (2c), and any portion of the presentence investigation report that contains information pertaining to the victim that was obtained pursuant to sub. (2m). A victim who views any contents of a presentence investigation report may not keep a copy of any portion of the report and shall keep the information he or she views confidential."

950.04 (1v) (d) Subject to the limits set forth in s. 972.15 (4), to view portions of a presentence investigation report prepared under s. 972.15 that relates to the crime upon the victim."

Trevor

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**From:** Hurley, Peggy  
**Sent:** Wednesday, November 13, 2013 10:53 AM  
**To:** Ford, Trevor  
**Subject:** RE: psi

Hi Trevor,

Thank you for your response. The language Mark suggested doesn't require the victim to keep the information confidential – it keeps current law, which requires the DA and the defense attorney or defendant to keep this information confidential (except for sharing relevant portions with the victim). Further, I think the amendment of 950.04 (1v) (p) is a little confusing – it reads as if the person preparing the PSI is the one viewing the sentence recommendation and the victim information, and it allows a victim to read all information about any other victims that may be included in the report.

Maybe breaking s. 950.04 (1v) (p) into two sentences would work a little better:

950.04 (1v) (p) To have the person preparing a presentence investigation under s. 972.15 make a reasonable attempt to contact the victim, as provided in s. 972.15 (2m) and (4m). The victim has the right to view the sentence recommendation and any information about himself or herself contained in the presentence investigation report.

The amendment of s. 972.15 (4m) creates an exception to the rule that the DA and the defense attorney must keep the PSI confidential; it allows them to break confidentiality in order to share the relevant portions of the PSI with the victim. This suggests that a victim may only view the relevant portions of the report by going through the DA or the defense attorney; is that your intent? If that does reflect your intent, I think the language provided works. However, if you want the victim to have access to relevant portions of the report without having to go through the DA or the defense attorney, I think a separate provision within s. 972.15 is needed.

If you want a separate provision within s. 972.15, I would suggest including the confidentiality requirement in that provision. However, if you want to require the victim to go through the DA or the defense attorney, I'd suggest putting the confidentiality requirement in s. 950.04 (1v) (p). Please let me know your thoughts.

Peggy

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**From:** Ford, Trevor  
**Sent:** Wednesday, November 13, 2013 10:30 AM  
**To:** Hurley, Peggy  
**Subject:** FW: psi

Does this language suggestion do what we want? All we want is for the victim to be able to see the portion of the PSI that contains the information they give when they are interviewed, I believe that is the (2m) part, for them to see the sentence recommendation, to have it listed in the victim's rights list, and to state that they must keep it all confidential. So whatever wording accomplishes that works for us. If you want to talk to Mark for any clarification that works as well. Thanks Peggy.

Trevor

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**From:** Rinehart, Mark W. [<mailto:RinehartMW@DOJ.STATE.WI.US>]  
**Sent:** Wednesday, November 13, 2013 10:18 AM  
**To:** Ford, Trevor  
**Subject:** RE: psi

Hi Trevor,

The language below may work, but we think the following may be the easiest way to accomplish creating a victim right and creating limited access:

950.04 (1v) (p) To have the person preparing a presentence investigation under s. 972.15 make a reasonable attempt to contact the victim and to view the sentence recommendation and any victim information included on the presentence investigation report, as provided in s. 972.15 (2m) and (4m).

972.15 (4m) The district attorney and the defendant's attorney are entitled to have and keep a copy of the presentence investigation report. If the defendant is not represented by counsel, the defendant is entitled to view the presentence investigation report but may not keep a copy of the report. A Except as provided in s. 950.04 (1v) (p), a district attorney or defendant's attorney who receives a copy of the report shall keep it confidential. A defendant who views the contents of a presentence investigation report shall keep the information in the report confidential.

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**From:** Ford, Trevor [<mailto:Trevor.Ford@legis.wisconsin.gov>]  
**Sent:** Monday, November 11, 2013 3:05 PM  
**To:** Rinehart, Mark W.  
**Subject:** RE: psi

Mark,

Here's what I got back from the drafter for this bill. It looks like what we are going for to me, but do you guys want to take a quick look at it as well? Thanks.

“972.15 (4r) The victim of the crime is entitled to view all sentencing recommendations included in the presentence investigation report, including any recommendations under sub. (2b) or (2c), and any portion of the presentence investigation report that contains information pertaining to the victim that was obtained pursuant to sub. (2m). A victim who views any contents of a presentence investigation report may not keep a copy of any portion of the report and shall keep the information he or she views confidential.”

950.04 (1v) (d) Subject to the limits set forth in s. 972.15 (4), to view portions of a presentence investigation report prepared under s. 972.15 that relates to the crime upon the victim.”

Trevor

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**From:** Rinehart, Mark W. [<mailto:RinehartMW@DOJ.STATE.WI.US>]

**Sent:** Tuesday, October 22, 2013 5:01 PM

**To:** Ford, Trevor

**Subject:** psi

Hi Trevor,

At this point, we're still thinking it's best to allow victims to see the portion of the PSI that contains the victims' information obtained under 972.15(2m) and the sentence recommendation only, and to state that right in Chapter 950.



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-28641

PJH/wlj/jf

2  
1  
stays

2013 BILL

11-17-13

Other

Regen

portions of

1 AN ACT ~~to amend~~ 972.15 (4); and ~~to create~~ 972.15 (4r) and 950.04 (1v) (pd) of  
2 the statutes; **relating to:** allowing a victim of a crime to view a presentence  
3 investigation report.

**Analysis by the Legislative Reference Bureau**

Under current law, if a person is convicted of a crime, the court may order a presentence investigation report be prepared. Generally, the presentence investigation report is confidential. However, under current law, the district attorney and the defendant's attorney are entitled to have and keep a copy of the presentence investigation report. If the defendant is not represented by counsel, the defendant is entitled to view the presentence investigation report but may not keep a copy of the report. A district attorney or defendant's attorney who receives a copy of the report shall keep it confidential. A defendant who views the contents of a presentence investigation report shall keep the information in the report confidential.

Also under current law, a victim of a crime has certain rights, including the right to have the person preparing a presentence investigation report make a reasonable attempt to contact the victim in order to determine the economic, physical, and psychological effect of the crime on the victim. The victim does not have the right to view the presentence investigation report.

Under this bill, a victim of a crime has a general right to view the contents of a presentence investigation report relating to the crime. Under the bill, a district attorney may prohibit or delay the victim from viewing a presentence investigation

**BILL**

Insert  
analysis

report if he or she determines that permitting the victim to view the report may compromise an ongoing investigation or prosecution. Under the bill, a victim who views a presentence investigation report may not keep a copy of the report and is required to keep the information in the report confidential.

any contents of

must

he or she views

of any portion

**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

1 SECTION 1. 972.15 (4) of the statutes is amended to read:

2 972.15 (4) Except as provided in sub. (4m), (4r), (5), or (6), after sentencing the  
3 presentence investigation report shall be confidential and shall not be made  
4 available to any person except upon specific authorization of the court.

5 SECTION 2. 972.15 (4r) of the statutes is created to read:

6 972.15 (4r) The victim of the crime is entitled to view the presentence  
7 investigation report, except that the district attorney may prohibit or delay the  
8 victim's access to the report if the district attorney determines that allowing the  
9 victim to view the report would interfere with an ongoing investigation or  
10 prosecution of a criminal matter.

A victim who views the contents of a presentence investigation report may not keep a copy of the report and shall keep the information in the report confidential.

he or she views

of any portion

Insert  
2.10

13 SECTION 3. 950.04 (1v) (pd) of the statutes is created to read:

14 950.04 (1v) (pd) Subject to s. 972.15 (4r), to view a presentence investigation  
15 report prepared under s. 972.15 that relates to the crime upon the victim.

portions of

(END)

the limits set forth in

**2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2864/lins  
PJH:wlj:jf

**INSERT ANALYSIS:**

Under this bill, a victim of a crime has a right to view the sentencing recommendations contained in the presentence investigation report and the portions of the report that contain information pertaining to the victim himself or herself.

**INSERT 2.10:**

The victim of the crime is entitled to view all sentencing recommendations included in the presentence investigation report, including any recommendations under sub. (2b) or (2c), and any portion of the presentence investigation report that contains information pertaining to the victim that was obtained pursuant to sub. (2m).

**Basford, Sarah**

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**From:** Ford, Trevor  
**Sent:** Friday, December 20, 2013 9:46 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -2864/2 Topic: Victim access to presentence reports

Please Jacket LRB -2864/2 for the ASSEMBLY.