



## 1997 SENATE BILL 363

November 20, 1997 - Introduced by Senators C. POTTER, DARLING and COWLES, cosponsored by Representatives HUBER, BRANDEMUEHL, MURAT, SYKORA and RILEY, by request of Attorney General James E. Doyle. Referred to Committee on Judiciary, Campaign Finance Reform and Consumer Affairs.

1     **AN ACT** *to renumber and amend* 809.19 (2); *to amend* 972.15 (2) and 972.15  
2             (4); and *to create* 809.15 (1) (a) 9m., 809.15 (6), 809.19 (2) (b) and 972.15 (4m)  
3             of the statutes; **relating to:** reports of presentence investigations.

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### *Analysis by the Legislative Reference Bureau*

Under current law, a court may order a presentence investigation concerning a criminal defendant who has been convicted of a crime. A presentence investigation gathers information about the defendant and may also gather information about the impact of the crime on the victim. The district attorney and the defendant's attorney (or the defendant if he or she does not have an attorney) may review the report of a presentence investigation before the defendant is sentenced. After sentencing, the report of the presentence investigation is confidential, except that the court may order that the report be made available and the department of corrections may use the report for correctional programming, parole consideration or care and treatment of a defendant sentenced to prison or placed on probation. In addition, the court of appeals has held that an attorney representing an indigent defendant on appeal or in other postconviction proceedings must be given access to the report of a presentence investigation concerning the defendant. *State ex rel. Oliver v. Goulee*, 179 Wis. 2d 376 (Ct. App. 1993).

This bill provides that a presentence investigation report, like pleadings, motions or other documents in the court file, is a part of the court record. The bill also provides that, in the event of an appeal, the presentence investigation report is part of the record on appeal. In a postconviction proceeding (such as an appeal)

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relating to the case in which a presentence investigation report was prepared, the report may be reviewed and cited by the court and by the attorneys in the case (or by the defendant, if he or she does not have an attorney). Because the bill does not otherwise change current confidentiality requirements relating to a presentence investigation report, citations to and discussions of the report by a court, attorney or defendant must not reveal names of certain persons whose identity is protected, such as juveniles or persons who provided information for the presentence investigation and whose identity is concealed by order of the court.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1           **SECTION 1.** 809.15 (1) (a) 9m. of the statutes is created to read:

2           809.15 (1) (a) 9m. If a presentence investigation was ordered under s. 972.15,  
3 the report of that presentence investigation.

4           **SECTION 2.** 809.15 (6) of the statutes is created to read:

5           809.15 (6) CONFIDENTIALITY OF PRESENTENCE INVESTIGATION REPORTS. A  
6 presentence investigation report that is included in the record under s. 809.15 (1) (a)  
7 9m. shall be confidential and shall not be made available to any person except the  
8 court, the attorney representing the state and either the defendant's attorney or, if  
9 the defendant is not represented by an attorney, the defendant.

10          **SECTION 3.** 809.19 (2) of the statutes is renumbered 809.19 (2) (a) and amended  
11 to read:

12          809.19 (2) (a) The Except as provided in par. (b), the appellant's brief shall  
13 include a short appendix providing relevant trial court record entries, the findings  
14 or opinion of the trial court and limited portions of the record essential to an  
15 understanding of the issues raised, including oral or written rulings or decisions  
16 showing the trial court's reasoning regarding those issues. The appendix shall  
17 include a table of contents. If the record is required by law to be confidential, the

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1 portions of the record included in the appendix shall be reproduced using first names  
2 and last initials instead of full names of persons, specifically including juveniles and  
3 parents of juveniles, with a notation that the portions of the record have been so  
4 reproduced to preserve confidentiality and with appropriate references to the record.

5 **SECTION 4.** 809.19 (2) (b) of the statutes is created to read:

6 809.19 (2) (b) No part of a presentence investigation report that is included in  
7 the record under s. 809.15 (1) (a) 9m. may be reproduced in an appendix to a brief.  
8 A party may discuss and cite to the presentence investigation report in a brief and  
9 may include in an appendix the portions of a transcript where the presentence  
10 investigation report was discussed or read into the record, but if any portion of the  
11 presentence investigation being discussed, cited or read is required by law to be  
12 confidential, the portion shall be reproduced using first names and last initials  
13 instead of full names of persons.

14 **SECTION 5.** 972.15 (2) of the statutes is amended to read:

15 972.15 (2) When a presentence investigation report has been received the judge  
16 shall make the report a part of the court record. ~~The judge~~ shall disclose the contents  
17 of the report to the defendant's attorney and to the district attorney prior to  
18 sentencing. When the defendant is not represented by an attorney, the contents shall  
19 be disclosed to the defendant.

20 **SECTION 6.** 972.15 (4) of the statutes is amended to read:

21 972.15 (4) After sentencing, unless otherwise authorized under sub. (4m) or (5)  
22 or ordered by the court, the presentence investigation report shall be confidential  
23 and shall not be made available to any person except upon specific authorization of  
24 the court.

25 **SECTION 7.** 972.15 (4m) of the statutes is created to read:

