

CPL ARTICLE 390: PRE-SENTENCE REPORTS.

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Fingerprint report from State Department of Criminal Justice Service [DCJS] - or arrest records from police - is required before any defendant can be sentenced for: felony; Penal law misdemeanor; non-P.L. misdemeanor, where charged as a felony (based upon prior crime conviction); and loitering (including for prostitution). Court can use print record from arrest, or order new one.

Upon written request of victim - or legal guardian where infant/incapacitated - Defendant (including Youthful offender) convicted of rape or sexual misconduct must undergo HIV test. Test shall be within 15 days of the Court's order, at a designated State/county/local health center as specified therein.

Request shall be made within 10 days after conviction; and specify that applicant was victim of specified offense committed by convicted defendant; that victim has been counseled by public health officer regarding the scientific limits of testing, the risks of contracting the disease anyways, and the need to undergo their own test.

Proceedings herein shall be in-camera, and all papers sealed; hearing limited to issue only of whether applicant was a victim. Testing and/or results need not be until after sentence. The results are NOT divulged to the Court, only to the victim and defendant. Re-disclosure allowed to victim's: immediate family, guardian, physician, mental health provider, attorney, and past/future sexual partners only if such at risk.

The information resulting from these proceedings cannot be used in any other criminal/civil cases, EXCEPT: perjury charges against a witness herein.

Failure to comply with any provisions herein shall NOT upset the sentence.

The Court MUST order a written pre-sentence report where defendant charged with any felony. Court MAY order such report in any case. Court need not *order* for any misdemeanor, but may not sentence Probation (unless agreed upon by both sides), or more than 90 days imprisonment (unless such term was agreed upon by both parties). No report is needed if one was done within past 12 months. No report is needed for revocation of probation, except when sentencing to determinate/indeterminate sentence. Where no report required, Court may nevertheless order a victim impact statement.

Pre-sentence report shall address defendant's: criminal/delinquent history; social status; employment; family; economic situation; education; and the circumstances of the crime for which convicted. Report must include physical/psychological exams where available. Court can direct any defendant convicted of a felony, or Class A misdemeanor, or under 21 years old to undergo such exam; Court may further direct defendant to remain in a facility for that purpose, up to 30 days.

Report shall include victim's statement (unless irrelevant): version of events; loss; injury; view towards appropriate sentence; restitution/reparation.

Report for misdemeanor can be in abbreviated short-form; but must include information on victim's loss, and restitution.

Information regarding the number of victim's impact statements shall be transmitted to the State Division of Probation, for disclosure to Crime Victims Board.

All reports are confidential. The court can exclude portion(s), must state reasons, and decision is appealable. Court to allow defendant's counsel (or pro-se defendant) and district attorney to examine/copy report at least 1 day prior to date fixed for sentencing (unless parties waive time).

Probation Department may MUST also make report available to NYS Court/Agency obtaining jurisdiction over the defendant in the future, as well as to facility where defendant be committed. Department MAY in own discretion provide such report to out-of-State courts/agencies. Probation can also provide report to DCJS. All such disclosure must be pursuant to confidentiality rules.

Prior to sentencing, defendant's counsel and district attorney can also provide memoranda to court. Defendant may annex the statements of other individuals as well. The Prosecutor's memo must be served on defendant's attorney at least 10 days prior to sentencing hearing.

Prosecutor must notify victim of sentencing hearing at least 21 days before date fixed; shall also specify the right - where extant - to make statement on 10 days' notice. If victim not receive reasonable notice timely, Court may adjourn no more than 7 days. Failure to notice victim NOT upset sentence.

A defendant may be placed on "interim" probation prior to sentencing; period not to exceed 1 year.

Any defendant licensed pursuant to Education Law: Education Department [Health department where licensed as physician or assistant] must be provided written probation report within 3 months of sentence; together with: name of defendant, nature and date of conviction, and index #. All such info to be kept confidentially.

If defendant imprisoned, copy of report shall be provided to Correction/Division for Youth [DFY] facility; and to any Office of Mental Health [OMH] hospital where later committed. Failure to do so does NOT affect commitment, but facility may refuse to accept defendant until report is received.