

Presentence Reports

Directive #17-69
(Amended in part)
Issued by:

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Edward B. McConnell
Administrative Director

This directive, which has been approved by the Supreme Court, is intended to supplement the Supreme Court's opinion in *State v. Kunz*, 55 N.J. 128 (1969).

1. In accordance with the requirements of *State v. Kunz*, the defendant in any court, including the Municipal Courts, shall be entitled to a copy of any report submitted to the judge for his or her use in determining the sentence or other disposition to be made.
2. The probation department making the report shall submit it to the sentencing judge in triplicate. The sentencing judge shall examine the report and may delete therefrom any matters which he or she considers to be irrelevant, which should not be made known to the defendant in order to protect confidential sources of information, or diagnostic matters which might be harmful to the defendant's rehabilitation if disclosed to him or her. Any matters so deleted shall not be considered by the judge in imposing sentence or in making his or her disposition of the matter. After examining the report and making such deletions as he or she may deem necessary, the judge shall forward one copy of the report to counsel for the defendant (or to the defendant if he or she is not represented by counsel) and one copy to the county prosecutor.
3. Before or at the time of sentencing, defendant's counsel (or the defendant, if not represented by counsel) and the county prosecutor may make known to the sentencing judge any inaccuracies or other deficiencies in the report. The judge shall not consider any disputed portions of the report and shall so note on the record at the time of sentencing, unless the accuracy thereof is established at a hearing. If the judge considers that disputed portions of the report may affect the sentence or disposition, he or she should hold a hearing to establish the facts.
4. Although copies of presentence reports shall be delivered to the defendant and the prosecutor, they shall remain confidential and copies thereof shall not be made nor disclosure of the contents of such reports made to third persons, except as may be necessary to determine the accuracy thereof or as may be necessary in subsequent court proceedings involving the sentence imposed or the disposition made.
5. In making presentence or other predisposition investigations and reports, the probation department shall insofar as possible follow the same practices and procedures as existed prior to the decision in *State v. Kunz* in order that such reports may continue to be of maximum value to the sentencing judge. In obtaining information for such reports, however, the probation department need only advise sources of information that the information sought is for purposes of making a presentence report to the court and that a copy of the report will be given to the defendant. If the

informant requests that the source be kept confidential, that request should be honored, and the information not included in the report, unless the information can be included without disclosing the source.

6. Sentencing judges and probation departments are requested to advise the Administrative Director of the Courts of any problems encountered in complying with the requirements of *State v. Kunz* and this directive and of any suggestions for improvement of sentencing procedures.

EDITOR'S NOTE

This directive is partially covered by *R. 3:21-2*. However the directive is retained because paragraph 2 is more explicit than the Rule and is referred to as authority by the Task Force on Reduction of Undue Sentencing Disparity and Improved Sentencing Procedures in its most recent *Sentencing Manual for Judges* August 23, 1988, supplemented October 1989.

The insertion of the citation for *State v. Kunz* and the deletion of all rule citations and all references to the former Juvenile and Domestic Relations Court or to the Municipal Courts has been made to this directive.

By memoranda, dated March 12, 1970, paragraph 5 of this directive was amended.