

Victims and Probation: Building a Collaborative Relationship\*  
An Analysis of Legislation

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## ABSTRACT

The Victims and Probation project is funded by the National Institute of Corrections (NIC), while the research project is part of an ongoing relationship between the Program Resources Center of the School of Criminal Justice, Rutgers University (PRC) and the National Association of Probation Executives (NAPE), with assistance from the National Organization for Victim Assistance (NOVA) .

This paper will present the results of our study of legislation relevant to the goal of increased and improved services to crime victims by probation officers. Improved collaborative relationships between the various agencies of the criminal justice system - in particular probation and victim advocates - should reflect in a better appreciation of the workings of the system by all involved as well as those outside it, and may also reflect in more clarity within it where, for example, duties are clearly specified and understood. Our hope is that improved services will be promoted by all concerned parties.

A discussion of all suggestions useful in working towards these goals will conclude this presentation.

Victims and Probation: Building a Collaborative Relationship  
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What is probation's legal mandate for the provision of services to crime victims: is legislation comprehensive and clear; does probation do more than the law requires and if so what are the effects? These are a few of the questions that arose when it became apparent to the Program Resources Center (PRC), and the National Association of Probation Executives (NAPE), that probation departments all over the country were interacting with victims and victim service agencies to unprecedented degrees. (Shapiro, Omole, and Schuman, 1986)

This interaction is part of the criminal justice response to victims. It is an attempt to remedy crime victims' special problems within the system, as sensitively as possible.

We have discovered that probation has both a direct and an indirect mandate to provide services to crime victims. In applying the law however, problems arise despite the available legislation. Legislation is not always comprehensive and clear; in fact, probation does more for victims than the law directly mandates.

The more serious effects of probation's provision of victim services are role confusion and the service ripple. Service ripple is the expansion in the scope of services to victims by probation as a result of an initial service provision by probation. This ripple can have both positive and negative effects. In spite of legislation, therefore, service provision by probation for victims is inadequate, extent problems in probation are exacerbated, and victims are still dissatisfied, confused and helpless.

This paper will address key issues surrounding probation's involvement in victim services especially in terms of Legislative content and meaning. The conclusion will address implications for probation's future involvement in victim services in light of the present legislation.

#### Historical development of victim legislation

Probation's more active participation in victim services evolved in the mid-1970s when victim rights became an important public issue. Before this time little legislation existed. In 1965 California passed victim compensation legislation but other states followed suit more rapidly only in the 1970s. At this time too, writers advocated the passage of such legislation (Shafer, 1970), and moved for the passage of Victim's Bills of Rights (Reiff, 1979).

Victim legislation was needed to incorporate the public concern for victims into the law. It would close the obvious gap in the law while also showing recognition of, and concern for victims.

Figure 1 shows the rapid transition in the amount of legislation concerning victims in a twenty-one year-time frame. (See Figure 1) In 1965 there was only one state with victim compensation legislation and in 1980 one state had a Victim Bill of Rights. By 1985, 43 states had passed victim compensation legislation and 34 had Victim Bills of Rights. In 1985 the total number of states passing laws for funding rose sharply. This has special implications for probation departments because none of these monies reached them.

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Insert Figure 1 about here

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The 1970s also saw a change in sentencing practices. There was a shift away from incapacitative prison terms to supervised probation in the community. This change coincided with pressure from victim advocates for the more humane treatment of victims by the criminal justice system. More and more probation had to combine two roles; in addition to making adequate supervision of probationers it now had to respond to victim needs. This created potential role conflict and frustration for probation officers.

In 1979 therefore, the project for the Improved Services to Victims Through Probation attempted to resolve these problems. The American Probation and Parole Association and the Blackstone Institute organized meetings where the role of probation in victim services was examined, research into the extent of probation's involvement in victim services was conducted, and training sessions to equip probation officers and probation administrators with the necessary skills for effective victim service delivery were held. (The Victim, 1980)

Today, service delivery to victims by probation is well established but the extant legislation does not reflect this development.

#### Probation and victim service legislation

##### Direct mandate

The preparation of the pre-sentence investigation report (PSI) is a function of probation required in the legislation which has an impact on victims. The pre-sentence report (PSI) is prepared at the court's request in order to help it arrive at an appropriate sentence for a convicted offender. The PSI usually contains information on the offender's criminal history, personal background, and

personality. It also gives details on the offense for which conviction was made. The PSI is often the only means by which the extent of victim harm is made known to the court. This is done through the inclusion of a Victim Impact Statement (VIS) or a Victim Statement of Opinion (VSO), in the PSI. These statements account for the importance of the pre-sentence investigation to victims.

The VIS is the term more widespread in the legislation. Both statements however, are personal comments by the victim or a relative of a deceased victim giving information on the extent of harm suffered by the act of a convicted offender (usually physical harm), and the effects of such harm on the victim.

The VIS is provided for in 26 states. In states where it is not required, room for its inclusion is given. A statute in such an instance may authorize the probation officer to provide, as in Mississippi, "any such other information as the department [of probation and parole] or judge may deem necessary." (Miss. CODE ANN. s47-7-9 1985).

A third feature of legislation important to probation's direct mandate to provide victim services is the collection of restitution payments and probation fees from a probationer, for payment to the victim.

In all three instances noted above, although the law requires a probation officer to provide these services, other officials (such as state or county prosecutor, the Commonwealth's Attorney or the county court clerk) may also carry out these same functions.

The collection and payment of monetary restitution, mediation of service contracts, and helping the court to make pre-trial release decisions affecting the diversion of an offender are other areas in which probation has a direct mandate which affects victims. (See Table A)

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Insert Table A about here

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#### Indirect mandate

Blanket provisions relevant to all criminal justice agencies exist. Here, probation is required to notify victims of their rights in the system. There is, for example, the duty to inform victims of what to expect from the criminal justice system and what the system expects of them, the duty to present victims with a copy of the Victim Bill of Rights, the duty to provide information on the availability of compensation awards and how to apply for them, and many others (See Table B) .

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Insert Table B about here

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#### Problems with the legislation

In Kansas the probation officer prepares the PSI for misdemeanor convictions and "the probation officer or other sources" for felony convictions (K.S.A. s21-4608, 1986). It is not clear why probation does not conduct the PSI in the latter instance.

In Maryland when a judge does not order a PSI the state's

attorney may prepare a VIS which the court is enjoined to consider at sentencing. (MD ANN.CODE Art.41 s124(c)(2) (iii)1985). No reason is given for requiring the state's attorney, rather than probation, to prepare the VIS at this stage.

In New York state provision is made for a VIS, yet the statutory language provides that nothing in the provisions shall be construed to require the victim to give information for the preparation of the PSI (NYCPL, 390.30, 1986). This is understandable in so far as it protects the victim's right to privacy; the conflict arises in that the VIS is also intended to help the court in sentencing an offender who has done harm to the victim. The victim's right to privacy should be balanced with the court's aims in sentencing, however. Where a victim can refuse to supply information to a probation officer the probation officer's work is impeded and an incomplete report is.. submitted to the court. The result is that the victim does not participate in sentencing even though the law has declared this to be an important element of the sentencing decision.

In many states a probationer can be imprisoned for failure to pay restitution fees. Where a probation officer has supervised the probationer's performance and ensured that some restitution has been paid, the imprisonment without attempts to restructure the payment schedule, renders the time spent on a supervision a waste. South Dakota has a useful provision in this respect. A restitution contingency provision, S.D.C.L. Chapter 23A-28-3, (1986) provides for a restitution contingency plan in the event that a probationer may later have the means to pay restitution. It would appear useful also where some restitution has been paid but new circumstances have inhibited



payments. (This is in no way intended to be an argument against punishment for refusals to pay.)

Concomitant with restitution collection is the need for disbursement. Where probation officers have acted as mediators in the process, a default often results in the probation officer facing the ire of the unsatisfied victim. The probation officer is not regarded as a simple mediator but a person in authority who should have stopped the probationer from defaulting. Probation officers are required to report delinquents to the court clerk or to the prosecutor however, before action to commit the offender for contempt of court, or to revoke probation, can be taken. It is a time-consuming process, yet delays contribute to the perception that the criminal justice system is slow to respond to victims' needs because they (i.e. victims) are not of major concern in the administration of justice.

#### Fragmentation

Services to victims can be fragmented and delayed where several agencies provide the same service. We see that although the preparation of the PSI report is primarily probation's responsibility it is often assigned to other criminal justice officials (See Table A). At the individual state level this is often practical. When viewed on a national scale, however, it indicates a basic contradiction between theory and practice.

Further, since probation is not the only agency to prepare the PSI or VIS, the difficulties arising by virtue of probations unique position may be underestimated. Preparation of a VIS, for example, involves interviewing the victim or a deceased victim's relatives. The probation officer has few investigatory resources but must locate

the individual, set up a convenient time for an interview, then conduct one. Where this is not possible the only options are to report: "victim unavailable for comment," or to make use of third hand information on the harm done.

Brian Forst and Jolene Herson write that judges consider the presentence investigation the most useful source of information about victim harm. Only 16% of victims actually testify at trial, they say, yet "the most important avenue the victim has to the judge is both narrow and indirect." (Forst and Herson, 1985). If this is the case then victim statements may have only a slight impact at sentencing so that the role of probation in making the extent of victim harm clear to the court is undermined by an inadequate recognition of its importance.

#### The service ripple

Probation departments which responded to the survey conducted by the PRC and NAPE revealed that they do much more for victims than the law actually requires. As a result of their having to address victim needs in general, probation officers act as counselors, interpreters and mediators. They also arrange for the placement of children with relatives or friends, contact a victim's relatives for help, and provide transport and escort services to court. Involvement in victim services at one stage of the system does lead to a more extensive participation in areas where no express or direct mandate is given. (Shapiro, Omole, and Schuman, 1985)

Despite this extension of service provision by probation to victims, there is still little supporting legislation specifically directed for probation.

Probation is enjoined to provide services to victims but there is no corresponding provision for funding and no training. In Montana the Montana Law Enforcement Academy is required to "offer education and training to law enforcement officers and prosecuting attorneys and shall provide such education and training in its regular curriculum so that victims may be properly assisted." (Mont-CODE ANN.s46-24-102 (1984) Strictly speaking, a probation officer is not a law enforcement officer, since: "no person while serving as a law enforcement officer may be appointed or perform the duties of a full-time or part-time probation officer." There is no provision for special victim training for probation officers. Where there is provision for training, this is often limited to courses within the state as in Michigan, New York, and other states. If no training is provided in the state however, probation officers must adapt as best they can.

### Conclusions and Suggestions

Consistency: If the need for a victim impact statement is not always seen to be consistently reflected probation's role here is of limited impact. Further, if victim rights in the criminal justice system are still largely a victim advocacy issue, no criminal justice agency will have ultimate responsibility in areas of particular import. It will be easy to pass the buck and apportion blame for failure elsewhere.

The relationship of victim services to the judicial process is not clearly defined. In theory a VIS is needed to aid the judge at sentencing, but it is not mandatory in all cases. It is clear that although the law recognizes the need to appreciate victim harm, it does not make adequate provision to ensure this takes place in

practice. It provides for ways in which it may be done but the absence of consistency and the lack of specificity lead to a merely peripheral impact by probation in this area,

Probation's role is also complex. In order to maintain neutrality, the infrastructure and support services which probation needs have to be provided. In times of work overload probation officers will necessarily be more concerned with their regular probation duties. Victims must then receive delayed and often diminished services.

Reasonable expectations: The change in sentencing practices from the 1970s led to increased numbers on probation, By 1982 there were approximately 1,500,000 adults and juveniles on probation. The 1982 population had grown by 10.7% in 1983. As of last year, 65% of the persons under correctional supervision were on probation. (Bureau of Justice Statistics, 1985). Although resources for the setting up of victim-witness units in prosecutor's offices was made, similar provision for improved victim service delivery by probation was overlooked. The large probation caseloads, the absence of an established mechanism to provide victim services, and the possibility for role conflict make it essential not to overestimate the extent to which probation can successfully incorporate victim services into its framework.

Research: In that the extent to which victims make use of the services provided by probation is still unknown, and the ways in which increased caseloads affect the supervision of probationers is still undocumented, research in these areas is need to maximize the effectiveness of probation in victim services. Other legislation

which impacts on different parts of, the criminal justice system - such as speedy trial acts on the courts -- may also impact on probation and in some ways affect victim service delivery. Research here may also yield useful results.

Training: Training programs based on an evaluation of probation's role in victim service delivery are important. Feelings of frustration and conflict have been expressed by probation supervisors; their confidence can be regained in thoughtful training sessions as started by the project for the Improved Services to Victims through Probation. Victim advocates have an important place here since they can best liase with probation departments and specify the more pressing concerns of victims that probation might approach. Training seminars would also familiarize probation officers with the technicalities limiting qualification for compensation awards. Training could also result in the production of even more comprehensive information pamphlets by probation departments.

New legislation: It has been shown-that the rapidity with which new legislation is passed does pose serious logistical problems. Proposals for new legislation need to be appraised in the light of practical needs as well as in the light of their contribution to the underlying philosophies in extent legislation. Probation% provision of services to victims of crime may then improve in both quality and quantity.

## REFERENCES

- American Probation and Parole Association & Blackstone Institute, (1980, April). IVSTP Update. National Survey: Preliminary Report. The Victim
- Bureau of Justice Statistics (1985). U.S. Dept. of Justice, Crime and Justice Facts, 25.
- Forst, B., & Hernon, J. (1985, June).. The Criminal Justice Response to Victim Harm. National Institute of Justice: Research in Brief.
- Karmen, A., (1985). Crime Victims. An Introduction to Victimology. Brooks/Cole: California.
- NOVA, Victim Rights and Services: A legislative Directory 1985
- Reiff, R., (1979). The Invisible Victim. Basic Books, Inc. New York.
- Shapiro, C., Omole, O., & Schuman, A. (1985, January). The Collaborative Relationship Between Victims and Probation: Is It Working?, Crime Victims Digest, 3(1). p. 1-3.
- Uniform System of Citation (198.6) 14th Ed.

TABLE A

Services Provided to Victims by Probation and Other Agencies over the States - July 1986\*

Agency	Service			
	Preparation of PSI	Preparation of VIS/VSO	Restitution Collection/ Disbursement	Other Investigations
Probation	Alaska; Arkansas; California; Connecticut; Idaho; Kentucky; Kansas; Louisiana; Maryland; Michigan; Mississippi; Missouri; N. Hampshire; N. Mexico; Nebraska; N. Jersey; New York; Texas; Utah; Vermont; Virginia; W. Virginia; Wisconsin	Connecticut; Idaho; Indiana; Maryland; N. Mexico; N. Jersey; New York; Ohio; Rhode Island; S. Carolina; Tennessee; Texas; Vermont; Virginia; W. Virginia; Wisconsin	Connecticut; Colorado; Indiana; Maine; Mississippi; Nevada; N. Jersey; Oklahoma; Rhode Island; S. Dakota;	Alabama; Arkansas; D.C.; Massachusetts; May serve process;
Prosecutors Office	Virginia	Georgia supplies form to Probation Officer and collects on completion; Texas to send VIS to victim;	Arkansas - investigates and recommends amount	Wisconsin - documents nature and amount of pecuniary loss
Court Clerks Office	Missouri-preserves PSI records;	Idaho - notifies court of victims requests;	Maine; Virginia, New Jersey Oregon - collects assessments	

\*Some states may provide these services. This table applies to states where the particular agency is actually specified.

Table B

Services Provided to Victims by Probation

Alabama

Pre-sentence Investigation and victim impact statement  
Investigation at request of court to determine whether person  
should be charged as a youthful offender.  
ALA-CODE Article 4 s 15-19-2 (1982)

Alaska

Pre-sentence investigation.  
Collection of restitution and direction of disbursement to  
victim.  
Provision of Victim Bill of Rights to victims.  
ALASKA STAT.s33.05.040) (1986)  
ALASKA STAT. s 18.67.175(b)(1986)

Arizona

Victim impact statement in felony cases.  
Collection of the probation supervision fee for deposit  
in the Victim assistance Fund.  
ARIZ. REV. STAT. ANN. Title 31  
Chapter 362 s 3 Art.431-466 (1985)  
ARIZ. REV. STAT. ANN.

Arkansas

Pre-sentence investigation;  
Collection of probation supervision fee for deposit in Victim  
assistance fund.  
ARK. STAT. ANN. s 43-2333 (1976)  
ARK. STAT. ANN. s 43-2808.1 (1976)

California

Mediation of service contract between victim and juvenile  
offender where restitution may be payed by the performance of  
specified services.  
Provision of information on the victim's rights to civil recovery  
and the right to attend hearings. Notification of time for  
hearings.  
Provision of crime victim compensation information  
Bill of Rights for victims specifies victim impact statement  
or victim statement of opinion  
CAL. PENAL CODE s 729.7 (West 1982)  
CAL. PENAL CODE s 1191.1, s 1191.2 (West 1982)  
CAL. PENAL CODE s 1191.2 (West 1982)



Colorado

Collection of restitution.  
Investigation for court.  
COLO. REV. STAT. s16-11-2045 (1973)  
COLO. REV. STAT. s16-11-209 (1973)

Connecticut

Pre-sentence report and victim impact statement.  
Collection and distribution of monies.  
CONN. GEN. STAT. ANN s54-91a (1985)  
CONN. GEN. STAT. ANN. s54-108 (1985)  
PA. 81-324 (1981)

Delaware

Pre-sentence investigation.  
DEL. CODE. ANN. Title 11 s4331 (1974)

District of Columbia

Case investigation and reports.  
D.C. CODE. ANN. s24-103 (1981)

Florida

Pre-sentence investigation .  
FLA. STAT. ANN. s948.01, s948.03 (1985)

Georgia

Victim impact statement.  
GA. CODE. ANN. Title 17 Chapter 10  
article 1 s17-10-1.1 (Michie 1982)

Hawaii

Pre-sentence investigation and restitution  
Hawaii REV-STAT. ss706-702, 706-605  
(1982 Replacement)

Idaho

Pre-sentence investigation and victim impact statement.  
.Collection of restitution:  
Provision of information to victim.  
IDAHO CODE  
IDAHO CODE s 19-5302 (Michie 1986)  
IDAHO CODE s 19-5306 (Michie 1986)

Illinois —

Pre-sentence investigation and victim impact statement.  
Provision of Victim Bill of Rights

Indiana

Pre-sentence investigation and other reports.  
Collection and disbursement of monies from probationers.  
Assist court in making pre-trial release decisions and decisions  
regarding the release of charged individuals.  
IND. CODE. ANN. s11-13-1-3-(1), s35-4.1-4-10 (West 1982)  
IND. CODE. ANN. s11-13-1-3(10) (West 1982)  
IND. CODE. ANN., s11-13-1-3(2) (West 1982)

Iowa

Pre-sentence investigation.  
IOWA CODE ANN. s901.2, s906.4 (West 1984)

Kansas

Pre-sentence investigation and victim impact statement.  
KAN. STAT. ANN. s21-4604 (1984)

Kentucky

Pre-sentence investigation;  
Collection and disbursement of monies  
KY. REV. STAT. ANN. s439.480, s532.050 (Baldwin 1986)  
KY. REV. STAT. ANN. s439.480 (Baldwin 1986)

Louisiana

Pre-sentence investigation and victim impact statement.  
Post-sentence investigations.  
LA. REV. STAT. ANN. Article 875 (West 1981)  
LA. STAT. ANN. Article 876 (West 1981)

Maine

Collection and disbursement of restitution payments.  
ME./ REV. STAT. ANN. Title s1326 (1985 supp)

Maryland

Pre-sentence investigation and victim impact statement.  
MD. ANN.CODE s124 (1985)

Massachusetts

Serving of process.  
Collection and disbursement of restitution.  
MASS. ANN. LAWS  
ch, s92 (Law Co-op. 1981)

Michigan

Pre-sentence investigation,  
MICH. STAT. ANN. (1984)

**Minnesota**

Pre-sentence investigation  
Victim service notification  
MINN. STAT. ANN. s611A.045 (West 1981)  
MINN. STAT. ANN. s47-7-9 (1981)

Mississippi

Pre-sentence investigation and any other information  
MISS. CODE. ANN. s47-7-9 (1972 & 1985 Supp)

Missouri

Pre-sentence investigation and any' specified information for  
the court.  
MO. REV. STAT. s217.705 (1968 & 1985 Supp)

Montana

Notification of Crime Victim Compensation awards.  
MONT. CODE. ANN. s53-9-104 (1984)

Nebraska

Pre-sentence investigation and victim impact statement.  
NEB. REV. STAT. s29-2261 (1985 Supp)

Nevada

Investigations and reports  
Collection and disbursement of monies  
NEV. REV. STAT. ANN. s213.1095 (Michie 1986)  
NEV. REV. STAT. ANN. s213.1096 (Michie 1986)

New Hampshire

Pre-sentence investigation and victim impact statement/victim  
statement of opinion  
N.H. REV. STAT. ANN. 651.4 (1983 & Supp. 1985)

New Jersey

Pre-sentence investigation and victim impact statement.  
Restitution collection and disbursement.  
N.J. STAT.ANN s2c:46-4 (1982)

New Mexico

Pre-sentence investigation & victim impact statement  
Pre-release investigation  
N.M. STAT. ANN. s31-21-19 (1978)

New York

Pre-sentence investigation and victim impact statement.  
Restitution or reparations collection.  
N.Y. Crm. Proc. Law s256, s390.30 s60.27.420.10 (Co-op 1981)  
N.Y. EXEC. LAW s390.30 (Co-op 1981)

North Carolina

Pre-sentence investigation  
Collection and disbursement of monies  
N.C. GEN. STAT. s15-205 (1985).  
N.C. GEN. STAT. s15A-1343 (1985)

North Dakota

Information not available at this time.

Ohio

Victim impact statement  
Ohio REV. CODE. ANN. s2947.051, s2907.05.1 (Anderson 1982)

Oklahoma

Investigations. Collection and disbursement of fees  
Monitoring and administration of restitution payments.  
22 s991a, s1166  
OKLA. STAT. ANN. Title 22 ss991, 1166 (West 1986)

Oregon

Pre-sentence investigation and victim impact statement.  
Inform victim of compensation procedure.  
OR. REV. STAT. ANN. s147.365 (1984)

Pennsylvania

Pre-sentence investigation  
PA CONS. STAT. Title 61 ss331.166, 331.17a (Purdon 1986)

## R h o d e I s l a n d

Pre-sentence investigation and victim impact statement,  
Restitution collection.  
Notification of rights of victims.  
R.I. gen. laws, s12-28-3 (14)(11), 12-19-34, 12-28-3 (-1985 Supp.)

## South Carolina

Victim impact statement.  
Post-sentence reports, supply information and hearing  
notification.  
s3(C)  
S.C. CODE. ANN. s5, 3(c) (Law Co-op 1976 & Supp. 1985)

## South Dakota

Community service restitution plans,  
S.D. CODIFIED Laws s23A-28-3- (1979 & Supp. 1986)

## Tennessee

Pre-sentence investigation and victim impact statement.  
Tenn. CODE. ANN; s40-21 (1986)

## Texas

Victim impact statement and supply of information.  
TEX. CRM. CODE. ANN. Art. 56.03, s56.02 (Vernon 1986)

## Utah

Pre-sentence investigation  
Monitor payment of fines and restitution  
UTAH. CODE. ANN. s77-18-1 (1986 Supp)

## Vermont

Pre-sentence investigation  
VT. STAT. ANN. Title 28- s204 (1985)

## Virginia

Pre-sentence investigation and victim impact statement.  
Restitution plans.  
VA. CODE s19.2-299.1, 19.2-305.1 (1986 Supp.)

## Washington

Pre-sentence investigation  
WASH. REV. CRIM. PROC. CODE. ANN. Rule 7.1. (1986 Supp.)

West Virginia

Pre-sentence investigation and victim impact statement  
Information on the criminal justice system  
W.VA CODE s61-11A-3, s62-12-7 (1985)

Wisconsin

Pre-sentence investigation and victim impact statements.  
Collection and disbursement of restitution payments.  
972.15(2m)  
WIS. STAT. ANN. s 973.09 (d) (West 1986 Supp.)

Wyoming

Pre-sentence investigation.  
WYO. STAT. ANN. s7-13-408 (1986)

