

May 15, 1997

Mr. David Young
Canyon County Prosecuting Attorney
1115 Albany Street
Caldwell, ID 83605

**THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE**

Dear Mr. Young:

I am writing in response to your letter of April 4, 1997, requesting guidance as to whether a presentence report must be disclosed to a prosecuting attorney, and the manner of such disclosure. Specifically, you have asked: (1) whether the department of correction must disclose the complete contents of the presentence report to the prosecuting attorney prior to the sentencing hearing; (2) whether such disclosure requires providing a copy of the report to the prosecuting attorney prior to the sentencing hearing; and (3) whether there are any conditions the prosecuting attorney must meet before receiving a copy of the report.

The answer to your first question is that the complete contents of the report must be disclosed to the prosecuting attorney. Idaho Criminal Rule 32(g) states in part, "Full disclosure of the contents of the presentence report shall be made to the defendant, defendant's counsel, and the prosecuting attorney prior to any hearing on the sentence except as hereinafter provided." None of the language that follows indicates any permissible limitation on disclosure of the contents to the prosecuting attorney.

It is not clear, however, that this disclosure is the responsibility of the department of correction. Rather, the disclosure appears to be the responsibility of the court. Under I.C.R. 32, the court has the discretion to order a presentence report. The general tenor of Rule 32 appears to leave the presentence investigation and report process within the control of the trial court. Further, I.C.R. 33.1(a), pertaining to presentence reports in capital cases, states in part, "After receiving the presentence investigation report, and delivering a copy thereof to the defendant or defendant's counsel and to the prosecuting attorney, the court shall . . . hold a sentencing hearing" Although this statement applies only to capital cases, it reflects an intention to give the trial court responsibility for disclosure of presentence reports. The trial court would therefore have responsibility for seeing to it that the contents of the report are disclosed, and would have control over the manner of disclosure.

With regard to your second question, there is an explicit requirement in cases where the death penalty is authorized that a copy of the presentence report be delivered to the defendant or defendant's counsel and the prosecuting attorney. I.A.R. 33.1(a). There is no such explicit requirement in other cases, and so the manner of disclosing the contents of the report in such cases would be within the control of the trial court. Providing a copy of the report to the prosecuting attorney is the usual practice and the most efficient method of such disclosure. For instance, the victim of a crime has a right to read the presentence report prior to the sentencing hearing. Idaho Constitution, article 1, section 22(9); Idaho Code § 19-5306(h). The prosecuting attorney is often in the best position to ensure that the victim is afforded this right, but he or she can do so only if provided with a copy of the presentence report.

Your third question is whether there are any conditions the prosecuting attorney must meet before receiving a copy of the presentence report. There are, of course, requirements of confidentiality contained in I.C.R. 32, and the prosecuting attorney must be prepared to comply with those. We are not aware of any other conditions that are applicable. In the absence of information as to the type of conditions that you have in mind, we cannot provide further guidance.

Please contact me if you have any additional questions or if we can be of further help.

Sincerely,

MICHAEL A. HENDERSON
Deputy Attorney General
Chief, Criminal Law Division