

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

OCT 30 2001

PETITION TO AMEND RULE 32 N.D.R.Crim.P.

STATE OF NORTH DAKOTA

1) Pursuant to Section 3 of the N.D.R.Proc.R., I hereby petition the North Dakota Supreme Court to consider the adoption of the following amendment to Paragraph (c)(4) of Rule 32 of the North Dakota Rules of Criminal Procedure:

(4) Disclosure

(A) The presentence investigation report is confidential and may not be read or copied by the public, or copied by the parties unless permitted by the court in its discretion. Any addendum to the presentence investigation report is confidential and may not be read or copied by the public or the parties unless permitted by the court in its discretion. If the court is of the opinion the report contains information that would be harmful to the defendant or other persons if disclosed, the court may not allow the public or the parties to read or copy that portion of the presentence investigation report or addendum. Notwithstanding these confidentiality provisions, the presentence investigation report and addendums may be disclosed to the Attorney General or his designees for purpose of compliance with N.D.C.C. Section 12.1-32-15. The presentence investigation reports and addendums will remain confidential and may not be read or copied by anyone other than the individuals mentioned above unless specifically authorized by the court in its discretion.

In addition, please add the following comment to the Explanatory Note of the rule:

The amendment to paragraph (c) (4) allows disclosure of the presentence report and addendums to the Attorney General or his designees only for purposes of assigning risk levels to sex offenders as required in N.D.C.C. Section 12.1-32-15. The court recognizes that the presentence report materials may include information relating to an individual's participation in federally assisted drug and alcohol programs. Notwithstanding the amendment to this rule, release of such information must comply with 42 U.S.C. 290dd-2 and the implementing regulations found at 42 C.F.R. Part 2.

2) The amendment to the rule is necessary for the following reasons:

a) Effective August 1, 2001, Section 12.1-32-15, N.D.C.C. requires the Attorney General and Department of Corrections and Rehabilitation to

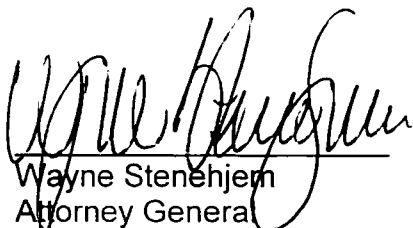
assign a low, moderate, or high-risk designation to each sexual offender required to register pursuant to the statute.

Thorough assessment of each individual requires a complete file of information, and of which the presentence investigation report is a key component. Access to the presentence investigation report under Rule 32 is limited to only a few agencies in the criminal justice system, and does not include the Attorney General's office. The report and its addendums will facilitate the review process and allow the Attorney General's office to avoid the cost of separately assembling the same information to the extent it is even possible to do so. The reports will be provided to the Attorney General by the Department of Corrections and Rehabilitation or by the court upon receipt of a petition for release of the information. After completion of the assessment, the copy of the presentence investigation report will be retained in our office, and will not be released to the public.

b) Local law enforcement officials and the staff at the Bureau of Criminal Investigation receive new registrations on a daily basis. Presently, there are approximately 800 registered offenders who must be assigned a risk level. With this backlog, securing all the necessary background information is critical to ensure a timely assessment. This process will allow our office to place information regarding high-risk offenders on a new web site designed for easy public access, which will provide our citizens with more information and in turn will help ensure public safety.

3) In light of the statutory requirements and the immediate need for access to the presentence investigation reports in order to deal with the existing backlog of offenders who must be assigned a risk level, I am also requesting the Court to order the amendment to take effect immediately pursuant to Section 6 N.D.R.Proc.R.

Date this 30th day of October 2001.


Wayne Stenehjem
Attorney General
State of North Dakota