

State Clemency Project: Sentencing Mitigation Checklist History and Characteristics of the Client

Birth/Childhood/Family Home

- Were there any complications at your *client's birth* (prematurity, oxygen deprivation, jaundice, addicted mother, etc.)?
- Where did your client *live* and with whom during childhood? (Obtain addresses, dates, lists of household members)
- Who were your client's primary *caregivers*? Did your client's caregivers/parent(s) work? If so, where, as what, and what were working hours?
- How do your client and his/her family members describe the *home environment* during childhood?
- Did your client ever experience physical/emotional *abuse in the home*? If so, from whom and what was the nature of the abuse?
- Did your client ever experience physical/emotional *abuse outside the home*? If so, from whom and what was the nature of the abuse?
- What kind of *relationship* did your client have with his/her parents? Siblings? Other family members?
- Did you client or any member of the household *run away*?
- Were the *police or social services* ever called to the household? If so, why and what happened?
- Was any member of the household *incarcerated*? If so, for what and how long?
 - Obtain records relating to any official contacts from above questionnaire
 - Review presentence report and any prior presentence report

Community

- List the *neighborhoods* in which your client grew up.
- Determine *available statistical information* related to such neighborhoods: income level, education and employment of residents, # of single-parent families, % level graduated from high school, environmental problems, crime level, etc.
 - Obtain public data related to the above statistics

Education

- Obtain list of *schools* your client attended and dates of attendance and reasons for leaving (address change, graduations, expulsion, etc.).
- Did your client receive a *free lunch*? What % of students did?
- How did your client *perform* in school? (Above average, average, below average, special education, honors program, etc.)
- Did your client ever have an *Individualized Education Plan (IEP)*?
- Did you client experience *behavioral problems* in school? How did these manifest and how – if at all – were they treated?
- Did your client's parents/caregivers participate in your client's schooling? How?

- Was there a teacher with whom the client had a positive relationship?
- Did your client participate in *extracurricular activities/sports*?
 - Obtain school records and school information; references from teachers

Employment

- Determine your client's *employment history* (employer, position, dates, reason for leaving)
- How did your client get by during periods of *unemployment*?
- If employment was *military* – set forth rank, branch, deployment, dates of service, and type of discharge
 - Obtain employment records/military records

Physical Health

- Did your client suffer from any *illness/injury/disability/chronic ailment*? If so, determine (a) its nature, (b) its severity, (c) how long the condition lasted, (d) how it was treated, (e) the outcome of treatment.
- Did your client ever visit an *emergency room*, stay in *hospital*, or experience *surgery*? If so, address the factors mentioned above.
- Did your client ever experience a physical illness or injury for which he/she was never treated? If so, address the factors mentioned above
 - Obtain hospital/doctor's office records.

Mental Health

- Did your client ever suffer from any *mental health condition*, including an addiction (alcohol, drug, gambling, sex, etc.)? If so, determine (a) what, (b) where threatened, (c) diagnosis, (d) treatment, and (e) outcome.
- Was your client ever subject to a *mental health evaluation*? If so, determine (a) why (i.e. personal referral, court referral), (b) where evaluated, (c) diagnosis/conclusion, and (d) any treatment indicated.
- Was any family/household member diagnosed as suffering from a mental illness?
 - Obtain evaluation/treatment records

Prior Criminal/Court History

- Prior to the offense of conviction, was your client ever *convicted of a crime*? If so, determine (a) date of arrest, (b) nature and circumstances of alleged offense, (c) disposition, (d) length and place of incarceration, (e) whether adult, juvenile, or youthful offender, and (f) experience on probation/parole.
- Other than convictions, was your client ever *arrested* before? If so, determine (a) date, (b) nature of charge, (c) reason for non-adjudicative outcome.
- Was your client ever the subject of *bankruptcy, divorce, child custody/support* proceedings, or otherwise a participant/witness in a court proceeding?
 - Obtain prior criminal/civil court records

State Clemency Project: Sentencing Mitigation Checklist Circumstances of Offense

Nature of the Offense

- Determine *facts underlying charged offense(s)* and offense(s) of conviction. Note, offense of conviction may ostensibly be violent, but offense itself, or client's role, was non-violent (and vice-versa).
- Did your client's offense involve *actual or threatened violence* (whether charged or encompassed in offense of conviction)?
- Was any violence in the offense planned, inherent in offense or accidental?
- Did the offense involve the possession, brandishing or discharge of *weapons*?
- Did your client act with *specific intent* to harm/injure a human being?
- Was any threatened violence incapable of completion? (e.g. unloaded firearm)
- Did it commence initially as lawful activity (or minor criminal activity) and develop into unlawful (or more serious) conduct?
- If your client was convicted at trial, was your client *acquitted* of any charges? If so, why?
- If your client pled guilty, what was nature of any charges that were dismissed and why? (nature of bargain struck, difficulty in proving more serious charges, etc.)
 - Review all available records relating to underlying offense, including trial transcript, complaint, indictment, sentencing submissions, etc.
 - In addition to client, interview defense attorney, co-defendants, co-defendant's attorneys, witnesses, etc.

Role

- What was your client's role in the offense? (mastermind, organizer, manager, soldier/street-level worker/other supporting role)
- Did your client initiate the offense or join in criminal conduct initiated by others?
- What was your client's role in any actual or threatened violence?
- Did your client carry a weapon?
- Did your client recruit/manage others?

Motive/Impetus

- What were the *immediate factors* leading to your client's participation in the instant offense? (Economic needs, feeding addiction, self-defense, provocation/revenge, duress, gang initiation, etc.)
- What are the *background factors* leading to your client's participation in the offense? Consider psychological deficits, mental illness diagnoses, early exit from school, replacement of missing father figure, gang participation for purposes of identity, criminogenic impact of early incarceration, etc.
- What was the *dominant factor* leading to your client's participation in the offense (predatory or aggressive motives potentially being viewed as more culpable than defensive or survival-related ones)?

Age

- How old was your client at the *time of the offense* (note neuroscience research indicating brain is not fully developed until mid-twenties, and establishing youth susceptibility to impulsiveness and peer pressure)?
- How old was your client at *time of criminal proceedings* (note research indicating diminished capacity of youth adequately to evaluate criminal justice options)?
- How old is your client *now* (note recidivism research relating to “aging out of crime”)?
 - Review research on age and crime

Period of Participation

- How long did your client’s participation in the offense last? (e.g., was it fleeting or sustained?)
- Did it involve one instance of criminal conduct or multiple instances?

Harm/Gain

- Were there identifiable victims (as opposed to broader societal harms)?
- If actual victims, how many and what was nature/severity of harm suffered?
- Did your client engage in any efforts to mitigate harm? (Calling 911, tending to the victim at the scene or bringing them to a hospital, returning something that was stolen, saying/writing an apology, voluntary reporting or cessation, cooperation, pleading guilty, etc.)
- What was your client’s gain, if any, from the offense?
- Did victims testify at sentencing?
- Did client express remorse at sentencing?
- Are victims willing to write today in support?
 - Review sentencing transcript; determine if letter of support could be solicited from victim(s)

Role of Prior Criminal History in Sentence Length

- To what extent was severity of current prison sentence driven by prior criminal history? (i.e. sentence length is not reflective of severity of instant offense)
 - Note emerging research on role of prior criminal history in driving long sentences

**State Clemency Project: Sentencing Mitigation Checklist
Prison Record and Re-Entry Plan**

Number and Nature of Institutions

- Determine the *institutions/sections of institutions* in which your client was incarcerated (*length, severity level*)
- Why was your client moved? (Discipline, security reclassification, administrative, etc.)
- Did these moves impact your client's ability to maintain/establish employment, programming, counseling, hobbies, clean disciplinary record? (Note that moves can be disruptive and disciplinary issues can be clustered around times when a client is adjusting to new environments).
- Was your client ever granted furloughs or otherwise permitted to travel outside prison boundaries unsupervised?
 - Obtain prison records related to designation/classification/furloughs

Education/Training

- Did your client participate in any *educational, vocational, or training* courses while in prison? If so, determine (a) nature, (b) length/hours, (c) grades/evaluations, and (d) certifications/diplomas.
- Were there issues outside your client's control that impacted their capacity to engage in education/training (e.g. availability of programs, physical capacity, etc.)
 - Obtain educational records, including copies of graduation documents and references from instructors

Employment/Volunteer Work/Hobbies

- Was your client *employed* while in prison? If so, determine (a) nature, (b) level of responsibility, (c) length/hours, and (d) evaluations.
- Did your client participate in any *volunteer work* while in prison (including suicide/mental health/medical companion, language instructor, group leader of counseling groups, high school speaker, leader of or participant in volunteer program or other initiative? If so, determine (a) nature, (b) length/hours, (c) impact, and (d) evaluations.
- What are your client's *hobbies*? If so, determine (a) nature, (b) length/hours, and (c) positive impact on your client, other inmates or other individuals.
- Were there issues outside your client's control that impacted their capacity to engage in employment/volunteer work/hobbies (e.g. availability of programs, physical capacity, etc.)
 - Obtain employment records and references from employers; obtain volunteer records and references from prison counselors

Medical/Mental Health/Treatment

- Has your client sought or received *medical treatment* while in prison? If so, (a) when, (b) for what, (c) for how long, (d) how treated, and (e) what was outcome?
- Has your client sought or received *mental health treatment* while in prison? If so, (a) when, (b) for what, (c) for how long, (d) how treated, and (e) what was outcome?
- Is your client *disabled*? If so, what is the nature and severity of the disability, and its impact on prison resources?
- Has your client sought or received *counseling/group therapy/addiction* treatment while in prison? If so, (a) when, (b) for what, (c) for how long, (d) how treated, and (e) what was outcome?
- Were there issues outside your client's control that impacted his/her capacity to engage in relevant treatment (e.g. availability of programs, medical personnel; timely diagnosis of physical or mental health issues, etc.)
 - Obtain medical, mental health, counseling/treatment records

Family/Social Networks

- With whom did client remain in contact throughout his/her incarceration (include nature of contact, i.e., in-person, telephone, letters, email)
- Were there issues outside your client's control that impacted their capacity to maintain contact with family/social networks (e.g. death, rejection, location of prison, etc.)
 - Obtain prison records

Disciplinary Record

- Has your client ever been *formally disciplined* while in prison? If so, (a) when, (b) for what, (c) did he/she challenge the charge, (d) was there a hearing, (e) what was the punishment?
- Did the infraction involve actual or threatened violence? If so, how serious? Is there a self-defense or coercion claim?
- Did the infraction involve others? If so, what discipline, if any, did they face?
 - Obtain disciplinary records, including any underlying reports/findings

Re-Entry Plan

- Where will your client *live* upon release and with whom?
- What are your client's *employment* plans, if any?
- What are your client's *education* plans, if any?
- What are your client's *medical/mental health/addiction treatment* plans, if any?
 - Obtain letters of support corroborating residential, employment and treatment plans

Resources For Further Guidance

Web Resources

- Janet Hinton, *Developing Mitigation Evidence* (Eastern District of Missouri Federal Public Defender), available at https://moe.fd.org/Dev_Mitigation.php
- Denise Barrett & Laura Mate, *Social Science at Sentencing: An Annotated Bibliography* (May 2017) available at https://www.fd.org/sites/default/files/criminal_defense_topics/essential_topics/sentencing_resources/useful_reports/social_science_bibliography_may_2017.pdf.
- JaneAnne Murray, *Social Science at Sentencing: A Survey of Federal Sentencing Decisions, 2005-2017*
- Frank Draper, *Resources for Mental Health & Mitigation at Sentencing* (2015) available at http://md.fd.org/cja2015/nov2015/mentalhealth/Presentation_Resources.pdf.
- United States Sentencing Commission research reports and publications, available at <https://www.ussc.gov/research/topical-index-publications>.

Books

- Edward C Monahan & James J Clark, *Tell the Client's Story: Mitigation in Criminal and Death Penalty Cases* (ABA, 2017)