

A photograph of an iceberg floating in clear blue water. The tip of the iceberg is visible above the surface, while the much larger, jagged base is submerged below. The sky is a clear, light blue with a few wispy clouds.

10 Sentencing
Advocacy Tips for
Better Outcomes

Wayne County CAP, September 2019
Marilena David-Martin | mdavid@sado.org



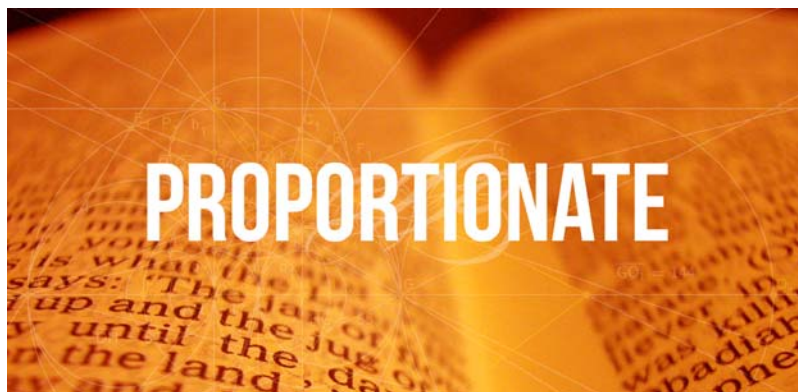
SADO
State Appellate Defender Office

Think. Pair. Share.

What is Sentencing Mitigation?

The action of reducing the severity, seriousness, or painfulness of something.

The Current Sentencing Landscape



Proportionate to What?

The Offense & Your Client

“Each of us is more than the
worst thing we’ve ever done.”

-Bryan Stevenson

What’s the worst thing
you’ve ever done?



Tip 1:
Get Paid



Motion for Reasonable Fees

There is a state and federal constitutional right to the effective assistance of counsel at sentencing. *Strickland v Washington*, 466 US 668 (1984); *People v Pubrat*, 451 Mich 589 (1996); US Const Amend VI & XIV; Const 1963 art 1, § 20.

Sentencing is a critical stage of the proceedings. See *Lafler v Cooper*, *Wiggins v Smith*, *Glover v United States*, *Mempa v Rhay*.



Tip 2:
Tell your
Client's
Story





Use Story at All Stages

The world of issues and motions

Your client's perspective as to how they are treated

Appellate lawyers will tell you...

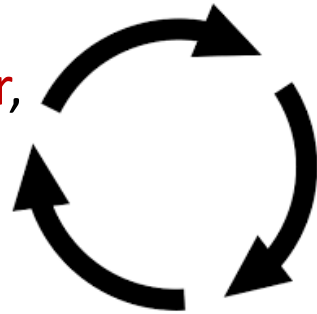


Use Story at All Stages

Every time you're in **court**

Every interaction with **prosecutor**,
court staff, corrections

Every **legal pleading** you file,
especially sentencing memo.



Tip 3:
Focus on
Trauma



ACE Questionnaire

Adverse Childhood Experience (ACE) Questionnaire Finding your ACE Score ra hbr 10 24 06

While you were growing up, during your first 18 years of life:

1. Did a parent or other adult in the household **often** ...
Swear at you, insult you, put you down, or humiliate you?
or
Act in a way that made you afraid that you might be physically hurt?
Yes No If yes enter 1 _____
2. Did a parent or other adult in the household **often** ...
Push, grab, slap, or throw something at you?
or
Ever hit you so hard that you had marks or were injured?
Yes No If yes enter 1 _____
3. Did an adult or person at least 5 years older than you **ever**...
Touch or fondle you or have you touch their body in a sexual way?
or
Try to or actually have oral, anal, or vaginal sex with you?
Yes No If yes enter 1 _____
4. Did you **often** feel that ...
No one in your family loved you or thought you were important or special?
or
Your family didn't look out for each other, feel close to each other, or support each other?
Yes No If yes enter 1 _____

ACE Questionnaire

5. Did you **often** feel that ...
You didn't have enough to eat, had to wear dirty clothes, and had no one to protect you?
or
Your parents were too drunk or high to take care of you or take you to the doctor if you needed it?
Yes No If yes enter 1 _____
 6. Were your parents **ever** separated or divorced?
Yes No If yes enter 1 _____
 7. Was your mother or stepmother:
Often pushed, grabbed, slapped, or had something thrown at her?
or
Sometimes or often kicked, bitten, hit with a fist, or hit with something hard?
or
Ever repeatedly hit over at least a few minutes or threatened with a gun or knife?
Yes No If yes enter 1 _____
 8. Did you live with anyone who was a problem drinker or alcoholic or who used street drugs?
Yes No If yes enter 1 _____
 9. Was a household member depressed or mentally ill or did a household member attempt suicide?
Yes No If yes enter 1 _____
 10. Did a household member go to prison?
Yes No If yes enter 1 _____
- Now add up your "Yes" answers: _____ This is your ACE Score

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Yes No If yes enter 1 _____

Now add up your "Yes" answers: _____ This is your ACE Score

ACE Contextualizes “Bad Choices”

“[I]t grounds the discussions of ‘justice’ in a developmental framework, and can move judicial consciousness to a more valid perspective on the concept of ‘choice.’ It is one thing to say a killer has made ‘bad choices’ (which is the foundation for the entire criminal justice system). But do the 10 ACEs items really represent ‘bad choices’ on the part of a child?”

Source: ACEs in the Criminal Justice System, James Gararino, PhD

ACE Contextualizes “Bad Choices”

“Do children ‘choose’ to accumulate the risk factors, trauma, and toxic stress assessed by the 10 ACEs questions—for example, to have separated or divorced parents, substance-abusing parents, suicidal parents, parents with mental health problems, or to be sexually or physically abused, to witness domestic violence or be emotionally neglected, or to have a parent or sibling go to prison?”

Source: ACEs in the Criminal Justice System, James Gararino, PhD

ACE Contextualizes “Bad Choices”

“The answer is a resounding ‘no,’ and establishing this developmental context before any evaluation of individual culpability should be a requirement at every point in an individual’s path through the criminal justice system.”

Source: ACEs in the Criminal Justice System, James Gararino, PhD

ACE Contextualizes “Bad Childhood”

“[U]sing the ACEs scores helps to ground the entire courtroom discussion in social reality, and dispel gratuitous comparisons or mythical understandings of what is needed in sentencing.”

Source: ACEs in the Criminal Justice System, James Gararino, PhD

ACE Contextualizes “Bad Childhood”

“All too often, a prosecutor will attempt to dismiss the relevance of a defendant’s history of adversity and toxic stress with word to the effect of ‘lots of kids have bad childhoods; what’s wrong with this guy?’”

Source: ACEs in the Criminal Justice System, James Gararino, PhD

ACE Contextualizes “Bad Childhood”

“But if ‘this guy’ has an ACEs score of 8, 9, or 10 he did not just have a generically ‘bad childhood.’ He had a childhood worse than 999 of 1000 people in America! Indeed, it constitutes a compelling ‘mitigating factor’ in a sentencing decision.”

Source: ACEs in the Criminal Justice System, James Gararino, PhD

ACEs in the Criminal Justice System



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The author has no conflicts of interest to disclose.

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ACADEMIC PEDIATRICS 2017;17:S32–S33

FOR MORE THAN 20 years I have served as a psychological expert witness in murder cases across the United States. Many of these have been “death penalty” cases, but increasingly they have been resentencing hearings for adults who were given automatic life without the possibility of parole sentences for murders committed when they were juveniles. These resentencing hearings resulted from the US Supreme Court’s decisions in *Miller v Alabama* and *Montgomery v Alabama* that such sentences are unconstitutional and that this decision must be applied retroactively to the ≥ 2500 individuals that make up this class of inmates.

It should not come as a surprise that childhood adversity is common and prominent among individuals who kill people. Childhood adversity leads to trauma and toxic stress, and trauma and toxic stress lead to the kind of developmental damage that in turn can lead to violence (as one among many outcomes, or other outcomes such as substance abuse and mental health that could similarly have repercussions for incarceration either as juveniles or adults) in the United States. Over the past 20 years I have sat with more than 100 killers, many of them adolescents or young adults at the time they committed murder.¹ I ask questions. I listen to their stories. I read the records in the files that document their lives. And, I ask them the 10 adverse childhood experiences (ACEs) questions. Low scores are the exception; high scores are the rule.

I have come away from these experiences with the conviction that the best starting hypothesis in dealing with most killers is that they are “untreated traumatized children inhabiting and controlling the dangerous adolescents and adults that stand accused of murder.” Approximately only 0.01% of Americans (1 in 1000) report an ACEs score of 8, 9, or 10.² The scores reported by the last 10 killers I interviewed had an average score of 8.

Acknowledging that the cases on which I am asked to consult might well not be a random sample, these cases do affirm that the accumulation of childhood adversity is linked to criminal violence. Thus, the entire criminal justice system should be built upon a “trauma-informed” approach to understanding and responding to violent behavior. How does this relate to the national agenda? What does it tell us about intervention policies and programs?

There are at least 3 ways in which recognizing the high prevalence of ACEs in the criminal justice system and the

model underlying this approach suggests policy and practice recommendations for the criminal justice system. First, it grounds the discussions of “justice” in a developmental framework, and can move judicial consciousness to a more valid perspective on the concept of “choice.” It is one thing to say a killer has made “bad choices” (which is the foundation for the entire criminal justice system). But do the 10 ACEs items really represent “bad choices” on the part of a child? Do children “choose” to accumulate the risk factors, trauma, and toxic stress assessed by the 10 ACEs questions—for example, to have separated or divorced parents, substance-abusing parents, suicidal parents, parents with mental health problems, or to be sexually or physically abused, to witness domestic violence or be emotionally neglected, or to have a parent or sibling go to prison? The answer is a resounding “no,” and establishing this developmental context before any evaluation of individual culpability should be a requirement at every point in an individual’s path through the criminal justice system.

Second, using the ACEs scores helps to ground the entire courtroom discussion in social reality, and dispel gratuitous comparisons or mythical understandings of what is needed in sentencing. All too often, a prosecutor will attempt to dismiss the relevance of a defendant’s history of adversity and toxic stress with word to the effect of “lots of kids have bad childhoods; what’s wrong with this guy?” But if “this guy” has an ACEs score of 8, 9, or 10 he did not just have a generically “bad childhood.” He had a childhood worse than 999 of 1000 people in America! Indeed, it constitutes a compelling “mitigating factor” in a sentencing decision. In some states (eg, Florida) judicial training materials now include an emphasis on understanding the implications of emergent ACEs research for just this reason.

Third, focusing on the accumulation of childhood adversity grounds the criminal justice system in developmental psychology and public health. The fact that the ACEs score accounts for 65% of the variation in suicide attempts, 55% of the variation in substance abuse, 45% of the variation in depression, and 30% of the variation in violent behavior makes clear the developmental relevance of adversity and toxic stress.³ More importantly, it dictates that the court should adopt a “trauma-informed” perspective in sentencing decisions.

Juveniles particularly must first be given access to trauma-informed therapeutic interventions before any long-term decisions concerning their fate are made.

Sentencing juvenile murderers to life without the possibility of parole is an affront to the state of the art in developmental science. The severity of a juvenile's crime does not correlate necessarily with their prognosis for rehabilitation and transformation in the years that follow adolescence. The immaturity of the adolescent brain and the malleability of adult brains alone is grounds for keeping the possibility of opening a door to release in the adulthood that follows after a murder is committed by a teenager.

The developmental pathways of many adults being re-sentenced under the Miller and Montgomery decisions by the US Supreme Court demonstrated the truth of this assertion. The terrible nature of the crimes these individuals committed as adolescents, in some cases decades ago, belied the fact that they could and in many cases did go on to become exemplary human beings. My preliminary hypothesis about these individuals is that access to therapeutic intervention and a subsequent spiritual transformation in the years after they were incarcerated led to their remarkable "recovery" as they matured. This hypothesis demands systematic research so that the policies and practices of the criminal justice system can be brought into line

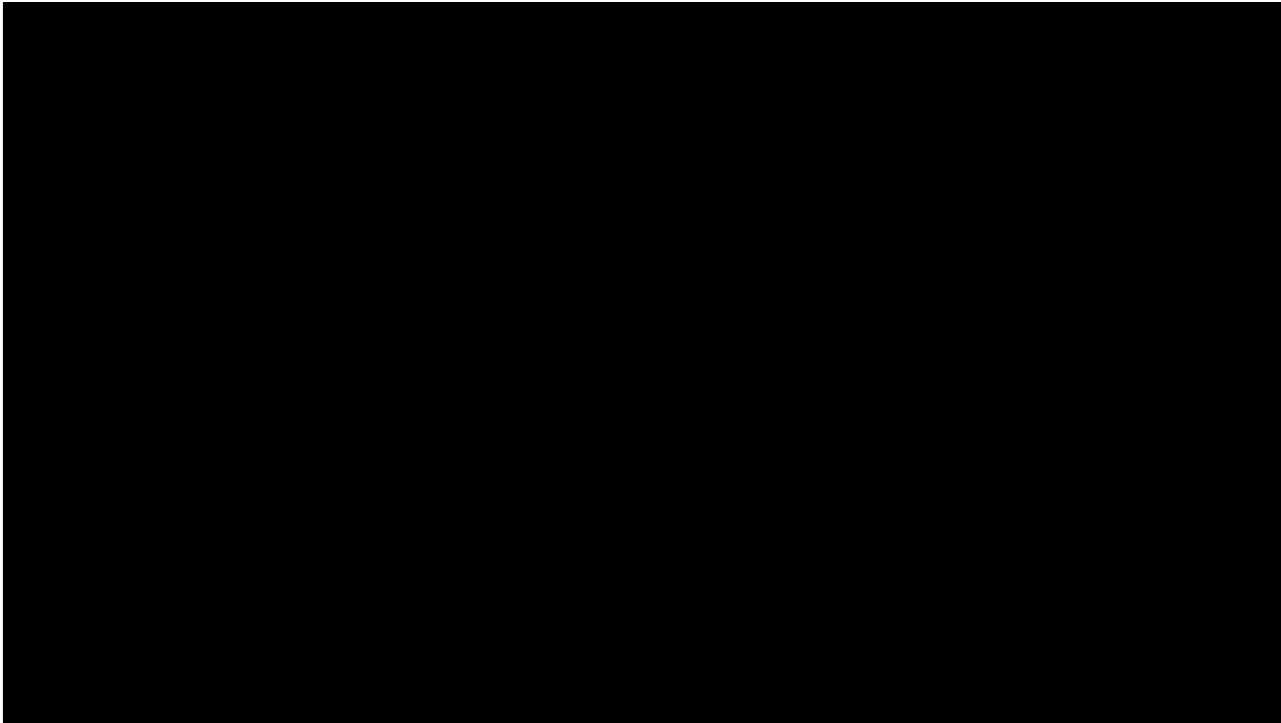
with the core principles of a "trauma-informed" response to the developmental effect of childhood accumulation of adversity, trauma, and toxic stress.

ACKNOWLEDGMENT

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Tip 4:
Youth
Matters



The Science Behind Youth as Mitigation

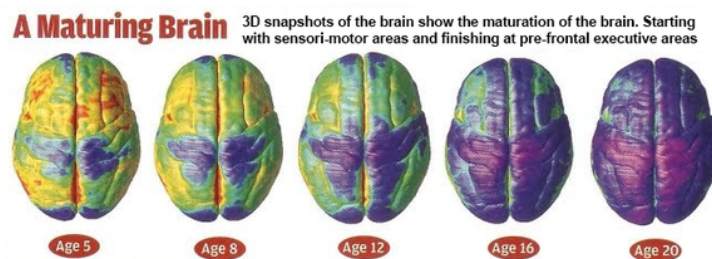
“The evidence now is strong that the brain does not cease to mature until the early 20s in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable.”

Ruben C. Gur, *Declaration of Ruben C. Gur, Ph.D., Patterson v. Texas, Petition for Writ of Certiorari to the United States Supreme Court* (2002).

The Science Behind Youth as Mitigation

Bottom Brain: Limbic - reward sensitive aspects of the limbic system and the arousal system **increase** to “hyperactive” state

Top Brain: Prefrontal Cortex - judgment, reasoning, impulse control are **underdeveloped and under-resourced**



Source: Dr. Daniel Keating

The Science Behind Youth as Mitigation

Age 18 years is a legal “bright line” with **no direct connection to scientific evidence**

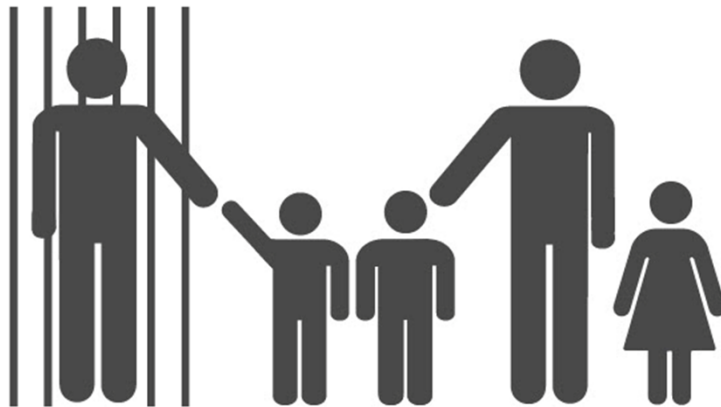
Brain development shows substantial growth, with maturation of PFC and decline of limbic hyperactivation by **the mid-20s**

The emerging scientific consensus is to view adolescence as extended or **elongated into the mid-20s**



Source: Dr. Daniel Keating

Tip 5:
Gather
Letters of
Support



Assistance for Writing Letter of Support

You have been asked to write a letter of support on NAME OF CLIENT's behalf for a sentencing scheduled on DATE before Judge NAME. Below is a list of information that it would be helpful for you to include in your support letter. This is only a guide. You are not required to include any specific information in your letter. Also enclosed is a sample letter.

- Identify yourself, where you are employed and list any organizational and/or religious affiliations you may have (e.g. member of specific local parish).
- State your relationship to NAME OF CLIENT. How did you come to know him/her? How long have you known him/her?
- Indicate whether you maintain contact with NAME OF CLIENT, whether through visiting, telephone calls or letters. How often do you speak with NAME OF CLIENT?
- Refrain from criticizing the justice system or the outcome of NAME OF CLIENT's case. Instead, indicate that you are confident that NAME OF CLIENT would be a benefit to you personally, or the community in general and explain why. Describe with specific examples how NAME OF CLIENT would benefit you and/or the community.
- State what role you would have in NAME OF CLIENT's support network once released from incarceration or while on probation. (e.g., can you help with transportation, a place to live, employment, etc.)

Judge [REDACTED]

My name is [REDACTED] and I am a friend of [REDACTED]. I am an accounting clerk for [REDACTED] Corporation. I have been working with this company for the last ten years. I have a bachelors degree in Accounting with a minor in Data Processing. I meet [REDACTED] in Chicago in 1986, I was taking a break from college and live in Chicago for the summer.

[REDACTED] and I became friends and have stayed in contact. During the summer of 1993, [REDACTED] moved to Muskegon and lived with me for awhile before going back to Chicago. We have always been good friends and I have the utmost respect for him. [REDACTED] desire to come to Michigan was to have a better life, and to get away from the negative people that was around him in Chicago. While in Chicago, he was a great help to his family and others. [REDACTED] I was utterly surprise to find out about his current situation.

When I did find out about this, I have been the type of friend that I know he is. I have made sure that he has money on the phone so that he could call his mother and father. I have kept in touch with his brothers and when possible placed money on his account to have extra items. I have offer him my home to be paroled to. I would hate to see him in any other problems that doesn't fit his character. I have also enlisted my family and friends to help him look for a job once he is released. If there is anything else that you would need to know about him or me. Please do not hesitant to call me at [REDACTED]

Thank you for your time.

Respectfully,

DATE

Jacqueline Ouvry
645 Griswold, Suite 3300
Detroit, MI 48226

Dear Ms. Ouvry,

It was nice speaking with you this morning about your cousin Marilena David. You indicated that you would be willing to write a letter of support to the court on Ms. David's behalf and to contact other family members to ask them to do the same. As I mentioned, I have enclosed a couple of copies of a document providing some guidance for the letters of support.

Ms. David's resentencing is scheduled for December 16, 2013, so please make an effort to have your letter, and any others you are able to collect, to me by the end of November at the latest.

If you have any questions, I can be reached at _____ or by email at ____@____.
Thank you for your help.

Sincerely,

NAME
Attorney At Law

Enclosures

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- State what role you would have in NAME OF CLIENT's support network once released from incarceration or while on probation. (e.g., can you help with transportation, a place to live, employment, etc.)
- Describe your positive feelings for NAME OF CLIENT as a person. Describe a significant event or experience you had with NAME OF CLIENT that made a difference in your life.
- Describe any positive accomplishments that NAME OF CLIENT has had that you may recall.
- List your contact information, including address, phone number and email address at the end of the letter and indicate that you would be available if there were any questions.
- Remember to keep the letters in a positive tone.
- **Write** all letters to the sentencing judge, but **send** all letters to defense counsel. Defense counsel will attach your letter to a Sentencing Memorandum that will be sent to the judge before sentencing. Do not send any letters directly to the Judge.
- If you know anyone else who would be willing to write a letter on NAME OF CLIENT's behalf, please give them a copy of this document.

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Your Honorable Magistrate:

I am writing you on behalf of my brother, [REDACTED], who is currently incarcerated.

[REDACTED] lived with me for 5 years before moving in with my mother to help her out with her bills.

He was always a big help with the monthly bills and the things around the house that needed to be fixed. He also was a great help when I needed someone to watch the kids when I had to work.

His responsibility was half of every bill that was due on a monthly basis. If he was not working at the time the bills were due, he would find odd jobs to do throughout the neighborhood, such as painting, going grocery shopping for the neighbors, cutting grass, cleaning gutters, homes, etc. [REDACTED] was not just a help to his family, but also to our neighbors, who are our extended family. He is very well known for his helping hands and humbling spirit. These are just some of the positive things that I wanted to highligh about my brothers life. I hope that you would take these things into consideration, when making your decision. I thank you for your time and consideration. It is greatly appreciated.

Sincerely,

[REDACTED]
[REDACTED]

Judge [REDACTED]

My name is [REDACTED] and I am a friend of [REDACTED]. I am an accounting clerk for [REDACTED] Corporation. I have been working with this company for the last ten years. I have a bachelors degree in Accounting with a minor in Data Processing. I meet [REDACTED] in Chicago in 1986, I was taking a break from college and live in Chicago for the summer.

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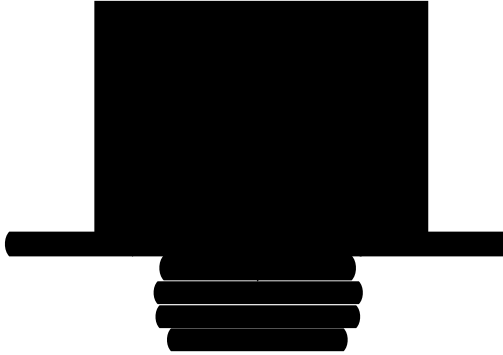
I would hate to see him in any other problems that doesn't fit his character. I have also enlisted my family and friends to help him look for a job once he is released. If there is anything else that you would need to know about him or me. Please do not hesitant to call me at [REDACTED]

Thank you for your time.

Respectfully,

[REDACTED]

[REDACTED]



[Redacted]

To Judge [Redacted]

[Redacted], the father of [Redacted] has demonstrated quality parenting at school. I do not believe that he is a threat to [Redacted]. [Redacted] came to school to volunteer in the classroom over her first two years of school, he is involved in her education in various ways including, teacher conferences and academic success. [Redacted] picks her up and drops her off in a timely manner when she is with him.

I have never witnessed him in any incidents of inappropriate behavior in my building. He demonstrates appropriate behavior at all times while visiting the school.

If you need any further information feel free to contact me at the number listed above.

[Redacted signature block]

Principal

[Redacted]

Tip 6:
Use Science,
Social
Science, &
Statistics



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**SENTENCING RESOURCES:
Using Studies & Statistics to Support Reduced Sentences**

Example: Substances and Mental Illness

SUBSTANCE ABUSE AND MENTAL ILLNESS

Doug McVay, Vincent Schiraldi, & Jason Ziedenberg, *Treatment or Incarceration: National and State Findings on the Efficacy of Cost Savings of Drug Treatment Versus Imprisonment* (March 2004), Justice Policy Institute Policy Report.

Available at: <http://www.justicepolicy.org/article.php?list=type&type=98>

Example: Unstable Housing

Research has shown that such mobility is detrimental in terms of education: “students generally lose about three months of reading and math learning each time they switch schools.”

Source: Sarah D. Sparks, *Student Mobility: How It Affects Learning*.

SENTENCING RESOURCES:

Using Studies & Statistics to Support Reduced Sentences

**Compiled by Sarah Gannett, D. Md., Hugh Mundy, M.D. Tenn.
& Molly Roth, W.D. Tex.**

Updated by Eric Fuchs & John Stinson, Law Clerks, Summer 2006

NOTE TO READERS

Many of the assumptions underlying the United States Sentencing Guidelines and government sentencing recommendations are simply untrue. The following resource list was compiled to help guide you to studies and statistics that undercut many of the most common assumptions. These are just examples. Web sites, professional journals, and even newspapers are replete with such information. Citing these sources to the Court will give strength and objectivity to your sentencing arguments.

It is our hope that this resource becomes a living document that expands over time with the input of defense attorneys nationwide. If you come across a source that is not included in this list, particularly sources published by the federal government, please submit the cite and excerpt in an email to sarah_gannett@fd.org or molly_roth@fd.org so that it may be included in future editions of this resource.

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FIREARMS OFFENSES

United States v. Serna, 435 F.3d 1046, 1049 (9th Cir. 2006).

- In holding that possession of a semiautomatic assault weapon was not a ‘crime of violence’ — “The most plausible inference to be drawn from the evolution of federal law as to assault weapons is that Congress allowed the ban to lapse, having found it unnecessary. Because current federal policy places assault weapons on the same footing as other non-registerable weapons, we see this, on balance, as supporting [the defendant’s] position.” *Id.* at 1049.

David McDowall, Colin Loftin and Brian Wiersema, *A Comparative Study of the Preventive Effects of Mandatory Sentencing Laws for Gun Crimes*, 83 J. Crim. L & Criminology 378 (1995)

- “Our analysis is based on six city-specific case studies, which monitored the effects of mandatory sentencing on violent crime in Detroit, Jacksonville, Tampa, Miami, Philadelphia and Pittsburgh. The key features of the laws were the same in each area. First, each law required judges to impose a specified sentence on defendants convicted of an offense involving a gun. Second, mitigating devices such as probation, suspended sentences and parole were prohibited.” *Id.* at 378-379.
- “Although the results of the case studies are complex, no individual study provides clear support for the proposition that mandatory sentencing reduces firearm violence.” *Id.* 385.

Steven Raphael and Jens Ludwig, “Do Prison Sentence Enhancements Reduce Gun Crime? The Case of Project Exile,” *Evaluating Gun Policy*. Jens Ludwig and Philip J. Cook, eds. Brookings (2003).

- Evaluating the impact of Project Exile and mandatory sentencing enhancements on gun-related violence in Richmond, VA.
- “[T]he reduction in Richmond’s gun homicide rates surrounding the implementation of Project Exile was not unusual and that almost all of the observed decrease probably would have occurred even in the absence of the program.” *Id.* at 252.
- “Our analysis confidently rules out the possibility that Project Exile achieved the dramatic reductions in gun violence that have been claimed in the past. . .” *Id.* at 277.

AGE

United States Sentencing Commission, *Guidelines Manual*, § 5H1.1 (2005).

- “Age may be a reason to depart downward in a case in which the defendant is elderly and infirm and where a form of punishment such as home confinement might be equally efficient as and less costly than incarceration.”

Measuring Recidivism: the Criminal History Computation of the Federal Sentencing Guidelines, A Component of the Fifteen Year Report on the U.S. Sentencing Commission’s Legislative Mandate (May 2004).

Available at: http://www.ussc.gov/publicat/Recidivism_General.pdf

- “Recidivism rates decline relatively consistently as age increases.” *Id.* at 12.

Nora V. Demleitner, *Smart Public Policy: Replacing Imprisonment with Targeted Nonprison Sentences and Collateral Sanctions*, 58 STAN. L. REV. 338, 2005.

- “As they constitute a large financial burden, older offenders might be a primary target group for nonincarcerative sanctions.” *Id.* at 351.

Vera Institute of Justice, *Esperanza Shows Promise at Lowering Recidivism Among Troubled Teens, Saving City Millions*, 21 July 2006.

Available at: www.vera.org

- Vera’s demonstration project “Esperanza,” which provides alternatives to placement for youth in trouble with the law, is helping to save New York City million of dollars and shows promise for reducing recidivism — according to a new report from the New York City Independent Budget Office (IBO). Esperanza and a similar program run by the Department of Probation saved the city more than \$1.2 million in 2005 and could save nearly \$5 million this year, the report notes. The authors project that outcomes could be even better if the early recidivism numbers persist: “The city will have savings from lower operating costs and also from lower recidivism which means lower jail costs, less police time, and better outcomes for city youth.”

PHYSICAL CONDITION

United States Sentencing Commission, *Guidelines Manual*, § 5H1.4 (2005).

- “An extraordinary physical impairment may be a reason to depart downward; e.g., in the case of a seriously infirm defendant, home detention may be as efficient as, and less costly than, imprisonment.”

RACE & SOCIO-ECONOMIC FACTORS

Erik Eckholm, "Plight Deepens for Black Men, Studies Warn," N.Y. Times, March 20, 2006.

- "Especially in the country's inner cities, finishing high school is the exception, legal work is scarcer than ever and prison is almost routine, with incarceration rates climbing for blacks even as urban crime rates have declined."
- "If you look at the numbers, the 1990s was a bad decade for young black men, even though it had the best labor market in 30 years."
- "In 2000, 65 percent of black male high school dropouts in their twenties were jobless – that is, unable to find work, not seeking it, or incarcerated. By 2004, that share had grown to 72 percent, compared with 34 percent of white and 19 percent of Hispanic dropouts. Even when high school graduates were included, half of black men in their twenties were jobless in 2004, up from 46 percent in 2000."

The Sentencing Project, *The Federal Prison Population: A Statistical Analysis*.

Available at: <http://www.sentencingproject.org/pdfs/federalprison.pdf>

- "African Americans now serve virtually as much time in prison for a drug offense (57.2 months) as whites do for a violent offense (58.8 months)." *Id.* at 2.

Jens Ludwig, Greg J. Duncan and Paul Hirschfield, "Urban Poverty and Juvenile Crime: Evidence From A Randomized Housing-Mobility Experiment," *Quarterly Journal of Economics*, Vol. 116:2 (2001).

- Analyzing federal and state government data on housing and juvenile crime activity in the Greater Baltimore Metropolitan Area to discover the effects of neighborhood poverty levels on criminal offending
- "Our central finding is that [a relocation] from a high- to a lower-poverty neighborhood reduces involvement in violent crime."
- "[M]oves to very low-poverty areas may cause an increase in property crime offending, at least in the short term."

IMPACT ON CHILDREN AND FAMILIES

United States Sentencing Commission, *Guidelines Manual*, § 5H1.6 (2005).

- “Family responsibilities that are complied with may be relevant to the determination of the amount of restitution or fine.”

United States Sentencing Commission, *Report to Congress: Downward Departures from the Federal Sentencing Guidelines* (October 2003).

Available at: www.ussc.gov/departprt03/departprt03.pdf

- “Almost all (90%) of offenders in the family ties departure sample provided caregiving and/or financial support to family members. Nearly two-thirds (61.9%) of these offenders, however, were not the sole provider of such support to dependents.” *Id.* at 51.

Child Welfare League of America, “What Happens to Children?” (2005).

Available at: <http://www.cwla.org/programs/incarcerated/whathappens.htm>

- When a parent is incarcerated (1) children’s lives are disrupted; (2) children often lose contact with their parents; (3) prison visits are difficult (4) most children live in poverty before, during and after their parents incarceration; (5) children experience difficult memories; and (6) children are at an increased risk for poor academic treatment, truancy, dropping out of school, gang involvement, early pregnancy, drug abuse, and delinquency.

Marc Mauer and Meda Chesney-Lind, *Invisible Punishment: The Collateral Consequences of Mass Imprisonment* (2005).

- “Examines the financially encumbered families who must travel hundreds of miles as a result of the rural prison movement, and the communities deprived of young men who would otherwise be starting families and careers.”

U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *Risk Factors for Delinquency: An Overview* (2001).

- Aggression, anti-social behavior, substance abuse, linked to poverty, anti-social parents, broken home, separation from parents, physical and emotional abuse, and neglect. *Id.* at 4.

Federal Interagency on Forum on Child and Family Statistics, *America’s Children: Key National Indicators of Well-Being* (2005).

- “Violence affects the physical, mental, and emotional well-being of young people who experience, witness or feel threatened by it. . . . such violence can adversely affect victims’ mental health and development and increase the likelihood that they themselves will commit acts of serious violence. *Id.* at 44.

The Sentencing Project, *Incarceration and Crime: A Complex Relationship*

Available at: <http://www.sentencingproject.org/pdfs/incarceration-crime.pdf>

- “The persistent removal of persons from the community to prison and their eventual return as a destabilizing effect that has been demonstrated to fray family and community bonds, and contribute to an increase in recidivism and future criminality.” *Id.* at 7.

Nora V. Demleitner, *Smart Public Policy: Replacing Imprisonment with Targeted Nonprison Sentences and Collateral Sanctions*, 58 STAN. L. REV. 338, 2005.

- “More than half of the women incarcerated in federal prisons have children, and more than eighty percent of them lived with their children prior to incarceration. Because of the sparseness of federal women’s prisons, most of the women are housed far from their families, making it more difficult for them to stay in regular, close contact with their children. Longer prison terms often automatically end parental rights. On the other hand, children of incarcerated parents are more likely to experience a host of negative consequences, including a greater likelihood of going to prison themselves.” *Id.* at 352.
- “Since many of the offenders with young children also constitute lower recidivism risks in light of their offense of conviction and their prior criminal records, sentencing judges should at least be allowed to consider the impact of a prison sentence on families and minor children. For that reason, more offenders with heavy family responsibilities, and especially those with minor children, should be eligible for intermediate sanctions.” *Id.* at 352.

Ross D. Parke and K. Alison Clarke-Stewart, *Effects of Parental Incarceration on Young Children*, from U.S. Department of Health & Human Services Conference “From Prison to Home” (2001).

Available at: <http://aspe.hhs.gov/hsp/prison2home02/>

- “Over 50% of the children of incarcerated parents had school problems, such as poor grades or instances of aggression.”
- “70% of young children with incarcerated mothers had emotional or psychological problems. Children exhibit internalizing problems, such as anxiety, withdrawal, hypervigilance, depression, shame and guilt.”
- “Many of the problems associated with either separation from the parent or co-detention can be avoided by provision of some form of community-based sentencing, instead of prison-based incarceration. These alternatives include house arrest, half-way houses where mother and children reside, and day programs in which mothers attend programs in a correctional institution during the day but are permitted to return home at night. Devine (1997) surveyed 24 community-based programs for mothers and children in 14 states. Community sentencing programs yielded reduced recidivism and increased family preservation — outcomes that have positive implications for children’s adjustment. In view of the cost effectiveness achieved by reducing the number of incarcerated women, it is surprising that these types of programs are available to only a small percentage of women violators. Because the vast majority of offenses committed by women are relatively minor and non-violent (e.g., drugs, prostitution), alternatives to regular incarceration merit more consideration.”

Creasia Finney Hairston, PhD, *Prisoners and Families: Parenting Issues During Incarceration*, from U.S. Department of Health & Human Services Conference “From Prison to Home” (2001).

Available at: <http://aspe.hhs.gov/hsp/prison2home02/>

- “Most families experience financial losses as a result of parental incarceration and the loss is greatest for those families who try to maintain the convicted individual as a family member.”

SUBSTANCE ABUSE AND MENTAL ILLNESS

Doug McVay, Vincent Schiraldi, & Jason Ziedenberg, *Treatment or Incarceration: National and State Findings on the Efficacy of Cost Savings of Drug Treatment Versus Imprisonment* (March 2004), Justice Policy Institute Policy Report.

Available at: <http://www.justicepolicy.org/article.php?list=type&type=98>

- “Though the time behind bars spent is limited, the impact of a felony conviction may last a lifetime, and even a short period of incarceration has been shown to affect people’s earnings, and ability to get a job, to be parents, and to become productive parts of their communities.” *Id.* at 3.
- “Treatment is a much less expensive option than incarceration for handling substance abusing offenders.” *Id.* at 5.
- “Dollar for dollar, treatment reduces the societal costs of substance abuse more effectively than incarceration does.” *Id.* at 6.

National Treatment Improvement Evaluation Study 1997 Highlights. (March, 1997) Washington, D.C.: U.S. Department of Health and Human Services, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration.

Available at: <http://www.health.org/nties97/costs.htm>

- Treatment appears to be cost effective, particularly when compared to incarceration, which is often the alternative.

National Institute on Drug Abuse, *Principles of Drug Abuse Treatment for Criminal Justice Populations*, National Institutes of Health (2006).

Available at: http://www.nida.nih.gov/PDF/PODAT_CJ/PODAT_CJ.pdf

- “Untreated substance abusing offenders are more likely to relapse to drug abuse and return to criminal behavior. This can bring about re-arrest and re-incarceration, jeopardizing public health and public safety and taxing criminal justice system resources. Treatment offers the best alternative for interrupting the drug abuse/criminal justice cycle for offenders with drug abuse problems.”
- “In 2002, it was estimated that the cost to society of drug abuse was \$180.9 billion (Office of National Drug Control Policy, 2004), a substantial portion of which—\$107.8 billion—is associated with drug-related crime, including criminal justice system costs and costs borne by victims of crime. The cost of treating drug abuse (including research, training, and prevention efforts) was estimated to be \$15.8 billion, a fraction of these overall societal costs. Drug abuse treatment is cost effective in reducing drug use and bringing about associated healthcare, crime, and incarceration cost savings.”

Jennifer C. Karberg and Doris James, *Substance Dependence, Abuse, and Treatment of Jail Inmates, 2002*, Bureau of Justice Statistics Special Report (2005).

Available at: <http://www.ojp.usdoj.gov/bjs/pub/pdf/sdatji02.pdf>

- “In 2002, 68% of jail inmates reported symptoms in the year before their admission to jail that met substance dependence or abuse criteria.”
- “Three-quarters of inmates in jail for drug or property offenses met dependence or abuse criteria.”
- “Half of all convicted jail inmates were under the influence of drugs or alcohol at the time of offense.”

Rydell, C.P. & S.S. Everingham, "Controlling Cocaine," (1994). Prepared for the Office of National Drug Control Policy and the United States Army.

- Each \$1 spent on cocaine treatment yield \$7.48 in societal benefits.

Rutledge, Josh, "Drug treatment urged in criminal justice," The Washington Times, 25 July 2006.

- A report from the National Institute on Drug Abuse (NIDA) states that failure to treat incarcerated drug abusers can lead to higher crime rates and re-incarceration and "the costs of treatment are not nearly as high as the costs to society when drug abuse is ignored."
- "Ninety-five percent of those who receive no treatment while incarcerated end up relapsing into drugs. And 70 percent of those end up re-incarcerated as a result."
- "NIDA says every dollar spent toward effective treatment programs yields a \$4 to \$7 return in reduced drug-related crime, criminal costs and theft. That return is even greater when health care savings are taken into account."

INCARCERATION OF NON-VIOLENT DRUG OFFENDERS

John Irwin, Ph.D., *America's One Million Non-Violent Prisoners* (March 1999), Justice Policy Institute Policy Report.

Available at: <http://www.justicepolicy.org/article.php?list=type&type=83>

- “The European Union, a political entity of 370 million, has a prison population including violent and nonviolent offenders, of roughly 300,000. This is one-third the number of prisoners which America, a country of 274 million, has chosen to incarcerate for just nonviolent offenses.” *Id.* at 5.
- “The 1,185,458 nonviolent offenders we currently lock up represents five times the number of people held in India’s entire prison system, even though it is a country with roughly four times our population.” *Id.* at 5.

The Sentencing Project, *The Federal Prison Population: A Statistical Analysis*.

Available at: <http://www.sentencingproject.org/pdfs/federalprison.pdf>

- “Nearly three-fourths (72.1%) of federal prisoners are serving time for a non-violent offense and have no history of violence.” *Id.* at 1.

United States Department of Justice, Bureau of Justice Statistics Fact Sheet, *Profile of Nonviolent Offenders Exiting State Prisons*, October 2004.

Available at: <http://www.ojp.usdoj.gov/bjs/pub/pdf/pnoesp.pdf>

- Among nonviolent releases, about 1 in 5 were rearrested for a violent crime within 3 years of discharge. *Id.* at 2.

United States Sentencing Commission, *Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice System is Achieving the Goals of Sentencing Reform* (2004) at 13.

Available at: http://www.ussc.gov/15_year/15year.htm

- “Rehabilitation was not taken into account in formulating the guidelines.”

United States Sentencing Commission, *Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice System is Achieving the Goals of Sentencing Reform* (2004) at 15, 22.

Available at: http://www.ussc.gov/15_year/15year.htm

- “The [Sentencing Commission Fifteen Year] Report criticizes mandatory minimum penalties for creating unwarranted uniformity, unwarranted disparity, and undue severity, and for bypassing collaboration with essential participants and criminological research as sources of sentencing policy development. However, the Report essentially acknowledges that the Commission took a bad idea and made it worse.”

United States Sentencing Commission, *Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice System is Achieving the Goals of Sentencing Reform* (2004) at 48.

Available at: http://www.ussc.gov/15_year/15year.htm

- “Congress intended to establish a two-tiered penalty structure with five-year mandatory minimums

for “managers of the retail traffic,” and ten-year mandatory minimums for “manufacturers or the heads of organizations.”

DRUG SENTENCING

United States Sentencing Commission, *Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice System is Achieving the Goals of Sentencing Reform*, 2004.

Available at: http://www.ussc.gov/15_year/15year.htm

- “73.7 percent of district court judges and 82.7 percent of circuit court judges [rate] drug punishments as greater than appropriate to reflect the seriousness of drug trafficking offenses.” *Id.* at 52.

The Sentencing Project, *The Federal Prison Population: A Statistical Analysis*.

Available at: <http://www.sentencingproject.org/pdfs/federalprison.pdf>

- “From 1992-2002, the average time served in prison for a drug offense increased by 31% from 32.7 months to 42.9 months.” *Id.* at 2.

See The Sentencing Project, *Incarceration and Crime: A Complex Relationship* at 6-7 (2005).

- “Incarceration has little effect on reducing drug crime because drug crime is driven by demand, and low-level dealers and couriers are easily replaced.”

United States Sentencing Commission, *Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice System is Achieving the Goals of Sentencing Reform* (2004) at 44-45.

Available at: http://www.ussc.gov/15_year/15year.htm

- “A majority of judges responding to a 2002 survey urged greater availability of probation with confinement conditions, especially for drug offenders.”

See U.S. Sentencing Commission, *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines* 13 & Exh. 11 (May 2004), available at <http://www.ussc.gov/research.htm>.

- “Of all federal offenders, drug offenders are the least likely to recidivate.”

United States Sentencing Commission, *Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice System is Achieving the Goals of Sentencing Reform* (2004) at 48-55, 132, 134.

Available at: http://www.ussc.gov/15_year/15year.htm

- “Tying punishment to mandatory minimum quantities, enhanced by the guidelines, sweeps in low-level offenders and punishes them as harshly as kingpins. This misdirects law enforcement resources from the kingpins and traffickers Congress had in mind.”

United States Sentencing Commission, *Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice System is Achieving the Goals of Sentencing Reform* (2004) at 117-18, 127-29, 130.

Available at: http://www.ussc.gov/15_year/15year.htm

- “A typical male drug offender is twice as likely as a female to be sentenced to prison, sentence length is 25-30% longer for men in all types of cases, women get larger downward departures, and are more likely to get an alternative sentencing option. This may be warranted by lesser involvement by women, greater family responsibilities and greater separation from their families caused by the relative scarcity of prisons for women, or it may be unwarranted disparity driven by paternalism or an incorrect assumption that men do not have family responsibilities.”

CRACK-POWDER DISPARITY

United States Sentencing Commission, *Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice System is Achieving the Goals of Sentencing Reform*, 2004.

Available at: http://www.ussc.gov/15_year/15year.htm

- The United States Sentencing Commission evaluation stated that the 100-to-1 crack/powder cocaine quantity ratio disproportionately impacts a “particular offender group,” (again, African-Americans) but serves “no clear sentencing purpose” because the “[t]he harms associated with crack cocaine do not justify its substantially harsher treatment compared to powder cocaine.” *Id.* at 132-33.
- “The harms associated with crack cocaine do not justify its substantially harsher treatment compared to powder cocaine.” *Id.* at 132.
- “Powder cocaine is easily converted into crack cocaine through a simple process involving baking soda and a kitchen stove. Conversion usually is done at the lowest levels of the drug distribution system. Large percentages of the persons subject to five- and ten-year penalties under the current rules do not fit the category of serious or high-level trafficker that Congress described when initially establishing the five- and ten-year penalty levels. Most crack cocaine offenders receiving sentences greater than five years are low-level street dealers. For no other drug are such harsh penalties imposed on such low-level offenders. High penalties for relatively small amounts of crack cocaine appear to be misdirecting federal law enforcement resources away from serious traffickers and kingpins toward street-level retail dealers.” *Id.* at 132.

United States Sentencing Commission, *Cocaine and Federal Sentencing Policy* (May 2002) at 91.

Available at: http://www.ussc.gov/r_congress/02crack/2002crackrpt.pdf

- The 100-to-1 ratio “fails to meet the sentencing objectives set forth by Congress in both the Sentencing Reform Act and the 1986 Act.”

Blanchard & Rogers, “Presumptively Unreasonable: Using the Sentencing Commission’s Words to Attack the Advisory Guidelines,” *The Champion*, March 2005 at 24.

- “The commission’s desire to create an evenly-spaced grid took precedence over sparing defendants whose drug amounts fell between the amounts specified in the mandatory minimum statutes. By admitting this, the commission creates an opportunity for you to challenge the reasonableness of drug trafficking guideline sentences falling between the statutory mandatory minimums.” *Id.* at 27.

Pamela A. Maclean, “After *Booker*, Judges Reduce Crack Cocaine Sentences,” *The National Law Journal*, October 11, 2005.

Available at: <http://www.law.com/jsp/article.jsp?id=1128947761797>

- “What has emerged among recent federal court rulings are expression by some of the jurists that a more reasonable ration would be a 20-to-1 difference between crack and cocaine.”

Diana Murphy, Statement to Senate Judiciary Committee, May 22, 2002, *reprinted in* 14 Fed. Sen. Repr. 236-239 (Nov./Dec. 2001- Jan./Feb. 2002).

- “[A]ggravating conduct occurs in only a small minority of crack cocaine offenses” and it “does not differ substantially from the prevalence in powder cocaine offenses.”
- Two-thirds of federal crack-cocaine defendants are street-level dealers.

William Spade, Jr., *Beyond the 100:1 Ratio: Towards a Rational Cocaine Sentencing Policy*, 38 ARIZ. L. REV. 1233, 1249 (Winter 1996).

- “The 500 grams of cocaine that can send one powder defendant to prison for five years can be distributed to eighty-nine street dealers who, if they converted it to crack, could make enough crack to trigger the five year mandatory minimum for each defendant.”

Ryan King & Marc Mauer, *Sentencing with Discretion: Crack Cocaine Sentencing After Booker* (January 2006).

Available at: <http://www.sentencingproject.org>

- Provides a comprehensive analysis of 24 written federal court decisions in 2005 that specifically implicate *Booker* to assess how courts have adjusted sentencing strategies for crack cocaine under this new system.

United States Sentencing Commission, *Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice System is Achieving the Goals of Sentencing Reform* (2004) at 51, 131-32, Available at: http://www.ussc.gov/15_year/15year.htm; U.S.S.G., App. C, Amend. 515, 624, 640, 668.

- “The Commission has recommended reducing the 100:1 powder to crack ration because ‘the harms associated with crack cocaine do not justify its substantially harsher treatment compared to powder cocaine,’ but Congress has not yet acted on that recommendation.”

Amy Baron-Evans, Sentencing Resource Counsel, *Enforcing the New Sentencing Law: Advanced Federal Criminal Appellate Practice Seminar*, March 2006.

- “As the May 2002 Commission Report concludes, ‘there is no authoritative legislative history that explains Congress’s rationale for selecting the 100 to 1 drug quantity ratio for powder cocaine and crack cocaine offenses.’ *Id.* at 28.

American Bar Association Justice Kennedy Commission, *Report with Recommendations to the ABA House of Delegates* (August 2004).

Available at: sentencing.typepad.com/sentencing_law_and_policy/files/JusticeKennedyCommissionReports-11Aug2004

- “[The Anti-Drug Abuse Act of 1986’s] differential treatment of crack and powder cocaine has resulted in greatly increased sentences for African-American drug offenders.” *Id.* at 28.
- The Act also “makes crack one of only two drugs for which possession is a felony” and it “prescribes crack as the only drug that triggers a mandatory minimum sentence for mere possession.” *Id.* at 28.
- “The overwhelming majority of crack defendants are African-American, while the overwhelming majority of powder cocaine defendants are white or Hispanic.” *Id.* at 28.

IMMIGRATION

Robert J. Sampson, *Open Doors Don't Invite Criminals*, N.Y. Times, March 11, 2006.

- Discussing studies showing that immigrants form stable, non-violent communities
- Evidence points to increased immigration as a major factor associated with the lower crime rate of the 1990's (and its recent leveling off).
- Living in a neighborhood of concentrated immigration is directly associated with lower violence.

Tim Schepers, *Does the Punishment Fit the Crime? U.S. Alien Deportation and the Requirement of Acceptance in Jama v. I.N.S.*, 28 HAMLINE L. REV. 387 (2005).

- Arguing that U.S. alien-removal procedure requires nothing less than the assent of a removal country because such a process upholds congressional intent, maintains the moral character of U.S. foreign policy, and recognizes a human beings right to even-handed, safe treatment.

Blanchard & Rogers, "Presumptively Unreasonable: Using the Sentencing Commission's Words to Attack the Advisory Guidelines," *The Champion*, March 2005 at 24.

- "The presence of [fast-track] programs in some districts, and their absence from neighboring districts, could lead to disparate sentencing outcomes for offenders convicted of similar conduct." *Id.* at 27.
- "Practitioners in districts that do not have fast-track programs have a powerful argument that a sentence within the advisory guideline range is unreasonable when similarly-situated offenders in fast-track districts routinely receive sentences well below the range." *Id.* at 28.
- "Practitioners whose clients plead guilty and waive procedural rights similar to the rights waived by offenders who benefit from formal fast-track programs can argue that a sentence four levels below the range recommended by the advisory guidelines is a presumptively reasonable sentence." *Id.* at 28.

Karen C. Turnlin, *Suspect First: How Terrorism Policy Is Reshaping Immigration Policy*, 92 CAL. L. REV. 1173 (2004).

- Arguing that since 9/11, few immigration policies have been created without terrorism policy in mind, which has led to immigration policy existing largely as a means of fighting terrorism.
- "Several Department of Justice post-9/11 policies explicitly employ immigration-plus profiling to impose greater scrutiny and selective enforcement of immigration laws on certain groups of immigrants." *Id.* at 1185.

Nora V. Demleitner, *Smart Public Policy: Replacing Imprisonment with Targeted Nonprison Sentences and Collateral Sanctions*, 58 STAN. L. REV. 338, 2005.

- "Noncitizens should not be automatically precluded from participation in intermediate sentences. They may be particularly suited for custodial confinement or an enhanced supervision program." *Id.* at 353.

Bill Ong Hing, *Deporting Our Souls and Defending Our Immigrants*, *Amerasia Journal*, Vol. 31, Issue 3 (2005).

- Explores how criminality can lead to the deportation of Asian American who have grown up in the U.S. and argues that the nation ought to be looking at alternatives to deportation.

United States Sentencing Commission, *Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice System is Achieving the Goals of Sentencing Reform* (2004) at 139; see also *id.* at 54, 62, 64, Fig. 2.13.

Available at: http://www.ussc.gov/15_year/15year.htm

- “Independent of mandatory minimums, the Guidelines account for 25% of the more than . . . tripling of immigration offense sentences.”

U.S.S.G., App. C, amend. 375.

- “The ranges under §2L1.2 for unlawfully entering or remaining were increased four times, the most significant of which was the 16-level increase for re-entry after an aggravated felony. That 16-level increase, the steepest increase in the Guidelines Manual, was not required by Congress, not supported by data or research, and was not explained.”

United States Sentencing Commission, *Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice System is Achieving the Goals of Sentencing Reform* (2004) at 87, 91.

Available at: http://www.ussc.gov/15_year/15year.htm

- “The real evidence of the undue severity of the immigration guidelines is that for many years, they have been rarely applied. Judges and prosecutors have avoided the harshness of the immigration guidelines through “fast track” charge bargaining and departures.”

U.S. Sentencing Commission, *Special Post-Booker Coding Project* at 13-15, 98, 112, 140, Jan. 5, 2006, http://www.ussc.gov/Blakely/PostBooker_010506.pdf.

- “Average sentence length under §2L1.2 decreased from 36 months in 2000 to 35 months in 2001 to 30 months in 2002 to 28 months in 2003 to 29 months in 2004 to 27 months in 2005. The highest departure rates by district are due to fast track programs and the guidelines have been unsuccessful in reducing inter-judge disparity in immigration cases.”

United States Sentencing Commission, *Report to Congress: Downward Departures from the Federal Sentencing Guidelines* at 139 (October 2003).

Available at: http://www.ussc.gov/15_year/15year.htm

- “In districts without fast track programs, defendants are receiving sentences double or more the average in cases sentenced under §2L1.2, because they are among the twenty or so percent who happen to get arrested in a district without a fast track program.” *Id.* at 16.

Kristin F. Butcher & Anne Morrison Piehl, *Cross-City Evidence on the Relationship Between Immigration and Crime*, *Journal of Policy Analysis and Management*, Vol. 17, No. 3 (1998).

- Concluding from statistical analysis that recent immigrants appear to have no effect on crime rates and that youth born abroad are statistically significantly less likely than native-born youth to be criminally active.

Kristin F. Butcher & Anne Morrison Piehl, *Recent Immigrants: Unexpected Implications for Crime and Incarceration*, 51 INDUS. & LAB. REL. REV. 654 (1998).

- Study conducted extensive analysis of “institutionalization” of immigrant groups as compared to “native” groups. Institutionalization primarily indicated incarceration but also included residence at mental hospitals and other long-term care facilities. *Id.* at 656.
- As a fraction of the population, the incarceration rates between native and immigrant residents were as follows — 1980: native-born (0.0135), immigrant (0.0069); 1990: native-born (0.0216), immigrant (0.0149) *Id.* at 659.
- Concluded that “the rate of institutionalization in the United States in 1980 and 1990 was lower among immigrants than the native born. When controls are included for characteristics that correlate with labor market opportunities and criminal justice enforcement intensity, institutionalization rates are much lower for immigrants than for natives.” *Id.* at 677.
- Calculated that “if natives had the same institutionalization probabilities as immigrants, our jails and prisons would have one-third fewer inmates.” *Id.* at 677.

SEX OFFENDERS

Center for Sex Offender Management, Office of Justice Programs, U.S. Department of Justice, *Myths and Facts About Sex Offenders* (Aug. 2000).

Available at: <http://www.csom.org/pubs/pubs.html>

- “It is noteworthy that recidivism rates for sex offenders are lower than for the general criminal population.”
- Child molesters have a lower rate of reconviction than rapists (for sex offenses, 13% compared to 19% in one study).
- “Individual characteristics of the crime” such as gender of the victim and relationship of the offender to the victim “further distinguish recidivism rates.”
- “Treatment programs can contribute to community safety because those who attend and cooperate with program conditions are less likely to re-offend than those who reject intervention.” (Characterizing as a “myth” the notion that “treatment for sex offenders is ineffective.”)
- Treatment costs less than incarceration (\$5-15,000 compared to \$22,000 for one year).

Center for Sex Offender Management, Office of Justice Programs, U.S. Department of Justice, *Recidivism of Sex Offenders* (May 2001).

Available at: <http://www.csom.org/pubs/pubs.html>

- Discusses likelihood of re-offense, contributing factors, and treatments.
- Dynamic factors associated with recidivism should influence the structure and supervision of individualized interventions. These factors include the formation of positive relationships with peers, stable employment, avoidance of alcohol and drugs, prevention of depression, reduction of deviant sexual arousal, and increase in appropriate sexual preferences. . . . This model is “currently the only approach that enjoys any evidence of effectiveness in reducing sexual recidivism.” *Id.* at 16.

Bureau of Justice Statistics, Office of Justice Programs, *Recidivism of Sex Offenders Released from Prison in 1994* (Nov. 2003).

Available at: <http://www.ojp.usdoj.gov/bjs/abstract/rsorp94.htm>

- “[S]ex offenders had a lower overall rearrest rate” compared to non-sex offenders.
- “No clear association was found between how long [sex offenders] were in prison and their recidivism rate.”
- The more prior arrests they had, the greater their likelihood of being rearrested for another sex crime after leaving prison.”

National Juvenile Online Victimization Study, *Child Pornography Possessors Arrested in Internet-Related Crimes*.

Available at: <http://www.unh.edu/ccrc/>

- Stats on offender characteristics that can help you show that your client is “normal” or “better than normal” (at least for a sex offender), *e.g.*, “Most CP producers had multiple victims and many victimized groups of children or adolescents.”

Hanson, R. Karl & David Thornton, *Static-99: Improving Actuarial Risk Assessments for Sex Offenders*.

Available at: <http://www.psepc-sppcc.gc.ca/res/cor/rep/cprmindex-en.asp>

- Compares the predictive accuracy of the three most commonly used sex offender risk assessment measures.
- Explains how each measure is used, and gives you the factors so you can present them to the court (e.g., prior sex offenses, prior non-sex offenses, male victims, stranger victims, never married, under 25 years old, etc.).

Berlin, F.S. & H.M. Malin, A. Dyer, G.K. Lehne, "A Five-Year Plus Follow-up Survey of Criminal Recidivism Within a Treated Cohort of 406 Pedophiles, 111 Exhibitionists and 109 Sexual Aggressives: Issues and Outcome," 12 *American Journal of Forensic Psychiatry* 3 (1991).

- Documenting the effectiveness of community treatment for sex offenders

CAREER OFFENDERS

United States Sentencing Commission, *Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice System is Achieving the Goals of Sentencing Reform*, 2004.

Available at: http://www.ussc.gov/15_year/15year.htm

- The career offender provision is a sentencing rule “that [has] a disproportionate impact on a particular offender group [namely, African-Americans] but that serve[s] no clear sentencing purpose . . . The recidivism rate for career offenders more closely resembles the rates for offenders in the lower criminal history categories in which they *would be* placed under the normal criminal history scoring rules in Chapter Four of the Guidelines Manual. The career offender guideline thus makes the criminal history category a *less* perfect measure of recidivism than it would be without the inclusion of offenders qualifying only because of prior drug offenses.” *Id.* at 134 (emphasis in original).

Anne E. Blanchard & Kristen Gartman Rogers, “Presumptively Unreasonable: Using the Sentencing Commission’s Words to Attack the Advisory Guidelines,” *The Champion*, March 2005 at 24.

- “The career offender provision is not necessary to protect the public from future crimes of the defendant when the provision’s application to the defendant rests on his or her prior drug trafficking convictions.” *Id.* at 27.

United States Sentencing Commission, *Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice System is Achieving the Goals of Sentencing Reform* (2004) at 133-34.

Available at: http://www.ussc.gov/15_year/15year.htm

- “The Career Offender guideline has a racially disparate impact on Blacks that is not warranted by an increased risk of recidivism.”

United States Sentencing Commission, *Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice System is Achieving the Goals of Sentencing Reform* (2004) at 133-34.

Available at: http://www.ussc.gov/15_year/15year.htm

- “The racial disparity is not warranted because the recidivism rate for offenders whose ‘career offenders’ status is based on controlled substance offenses is not more than that for offenders in the criminal history category in which they would have been placed under normal criminal history rules. This means that career offender status is unwarranted in any case in which the predicates are controlled substance offenses, regardless of the defendant’s race.”

United States Sentencing Commission, *Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice System is Achieving the Goals of Sentencing Reform* (2004) at 134.

Available at: http://www.ussc.gov/15_year/15year.htm

- “The use of non-moving violations in the criminal history score may also adversely affect minorities.”

CRIMINAL HISTORY

United States Sentencing Commission, *Guidelines Manual*, § 4A1.3 (2005).

- “If reliable information indicates that the defendant’s criminal history category is substantially over-represents the seriousness of the defendant’s criminal history or the likelihood that the defendant will commit other crimes, a downward departure may be warranted.”

RECIDIVISM

Measuring Recidivism: the Criminal History Computation of the Federal Sentencing Guidelines, A Component of the Fifteen Year Report on the U.S. Sentencing Commission's Legislative Mandate (May 2004).

Available at: http://www.ussc.gov/publicat/Recidivism_General.pdf

- Provides specific data supporting USSG Guidelines, including data on age, gender, employment status, and educational attainment
- Criminal history points are more predictive of recidivism than an offender's Criminal History Category. *Id.* at 7.
- "Women recidivate at a lower rate than men, and the difference is even greater in CHC V and VI." *Id.* at 11.
- "Recidivism rates decline relatively consistently as age increases, from 35.5% under age 21 to 9.5% over age 50." *Id.* at 12.
- "Stable employment in the year prior to arrest is associated with a lower rate of recidivism. However, in CHC V, recidivism rates are higher for those with a college education than those with less than a high school education." *Id.* at 12.
- "Recidivism rates decrease with educational level of recidivism." *Id.* at 12.
- "Offenders sentenced under the fraud, larceny and drug guidelines are the least likely to recidivate, and drug offenders are the least of all except in CHC I." *Id.* at 13.
- "The Offense Level is not a predictor of recidivism." *Id.* at 13.
- "Offenders are most likely to recidivate when their sentence is straight prison, as opposed to probation or split sentences." *Id.* at 13.
- Conclusion: Rehabilitation programs focused on drug use or education would have a high cost-benefit value (and should be used instead of incarceration where appropriate.)

Recidivism and the "First Offender," A Component of the Fifteen Year Report on the U.S. Sentencing Commission's Legislative Mandate (May 2004).

Available at: http://www.ussc.gov/publicat/Recidivism_FirstOffender.pdf

- "The guideline mitigating role adjustments to reduce the offense level was infrequently given: only 5.6 percent among all offenders in CHCs II through VI received this adjustment. First time offenders were overall, only slightly more likely to receive this adjustment." *Id.* at 10.
- "All offenders with zero criminal history points have a primary recidivism rate of 11.7 percent. This zero point offender rate is substantially lower than the recidivism rates for offenders with only one criminal history point. (22.6%), or for offenders with two or more points (36.5%) combined in the CHC II though CHC VI." *Id.* at 13-14.
- "The three first offender groups all come from offenders with zero criminal history points, and are defined as follows: group A contains offenders with no prior arrests; group B contains offenders with prior arrests, but no prior convictions; and group C contains offenders with only prior convictions that are to never count towards criminal history. Among these groups the lowest recidivism rate is for group A with a rate of 6.8 percent. Group B has a recidivism rate of 17.2 percent. Group C has a recidivism rate of 8.8 percent." *Id.* at 16-17.
- "Recidivism risk . . . is lowest for offenders with the least experience in the criminal justice system. Offenders with zero criminal history points have lower recidivism rates than offenders with one or more criminal history points. Even among offenders with zero criminal history points, offenders who have never been arrested have the lowest recidivism risk of all." *Id.* at 17.

A Comparison of the Federal Sentencing Guidelines Criminal History Category and the U.S. Parole Commission Salient Factor Score, A Component of the Fifteen Year Report on the U.S.

Sentencing Commission's Legislative Mandate (January 2005).

Available at: <http://www.uscc.gov/publicat/RecidivismSalientFactorCom.pdf>

- The SFS method is a better predictor of recidivism than is the CHC. *Id.* at 12.

VICTIM IMPACT

Restorative Justice

Coben, J. & Penelope Harley, "Intentional Conversations About Restorative Justice, Mediation and the Practice of Law," 25 *HAMLIN JOURNAL OF PUBLIC LAW AND POLICY* 235 (Spr. 2004).

- Describing the positive impact of restorative justice approaches that consider victim need and provide offenders with experiences that motivate reform.

Interests of the Child

Faller, Kathleen Coulborn, United States Department of Health and Human Services Administration for Children and Families, *Child Sexual Abuse: Intervention and Treatment Issues* (1993).

Available at: <http://nccanch.acf.hhs.gov/pubs/usermanuals/sexabuse/index.cfm>

- Discussing importance of family therapy and wishes of the child
- "The court can be helpful in compelling family members, especially offenders, into treatment; in protecting victims and families from offenders; and in effecting alternative living situations for offenders (or victims, if necessary)."

SENTENCING REFORM & PHILOSOPHY

U.S. Sentencing Commission, *Public Opinion on Sentencing Federal Crimes* at 86 (Oct. 1995).

Available at: http://www.ussc.gov/nss/jp_exsum.htm

- “Fairly strong consensus exists on the seriousness ordering of crimes, with those involving actual or threatened physical harm to victims generally considered to be the most serious and status victimless crimes regarded as least serious.” *Id.* at 11.
- “In giving concrete sentences to convicted persons, citizens are not guided solely by the seriousness of the crimes but also by the convicted person’s previous record and the amount of damage or loss suffered by victims.” *Id.* at 12.
- “There is some evidence that respondent sentencing preferences can be affected, perhaps strongly, by providing a wider range of punishment choices, information on prison conditions, and the costs of incarceration.” *Id.* at 12.
- “The general public does not make important distinctions between trafficking in heroin, powder cocaine and crack cocaine.” *Id.* at 86.
- “[The general public] did not typically favor long prison sentences for drug possession.” *Id.* at 85.

United States Sentencing Commission, *Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice System is Achieving the Goals of Sentencing Reform*, 2004.

Available at: http://www.ussc.gov/15_year/15year.htm

- “Using a sample of 264 federal judges sentencing a different series of hypothetical cases, they found that judges who were on average than judges who emphasized other goals.” *Id.* at 80.

Samuel B. Lutz, *The Eighth Amendment Reconsidered: A Framework for Analyzing the Excessiveness Prohibition*, 80 N.Y.U. L. REV. 1862 (2005).

- Asserting that the Supreme Court must revisit 8th Amendment jurisprudence to create a consistent standard for excessive criminal sanctions.
- “Current doctrine has created a situation in which nonviolent offenses like cocaine possession or obtaining \$120.75 by false pretenses can be punished by mandatory life imprisonment, while far more serious crimes of rape, felony-murder, and even non-aggravated murder cannot be punished by death. Thus, despite the fact that life imprisonment and death are the two most-severe punishments authorized by law and are similar in the enormous degree to which they infringe upon an individual’s interests, the level of scrutiny applied to each is dramatically different.” *Id.* at 1876.

Erik Luna, *Gridland: An Allegorical Critique of Federal Sentencing*, 96 J. CRIM. L. & CRIMINOLOGY 25 (2005).

- Advocating post-*Booker* for sentencing policies that (1) consider all the factors that distinguish individual defendants and offenses; and (2) allows judges to make a decision based on a moral balancing of the crime, the individual factors and circumstances, and the judge’s legal experience.
- “The fair method for sentencing is for an impartial judge, who is fully cognizant of an individual defendant’s personal character, family responsibilities, medical and mental condition, criminal record, and the particular circumstances surrounding the crime, to impose a sentence after deep reflection, informed by the judge’s experience in life and in the law.” *Id.* at 78.

Nora V. Demlietner, *Smart Public Policy: Replacing Imprisonment With targeted Nonprison Sentences and Collateral Sanctions*, 58 STAN. L. REV. 339 (2005).

- Arguing that post-*Booker*, federal courts should follow the lead of the states and impose non-

prison sanctions on offenders who pose a low-risk to public safety.

Patrick Kelly & Don Stemen, *Probation Reform: Is Zero Tolerance a Viable Option?*, Vera Institute of Justice, Research and Practice Forum (October 2005).

- Outlining a probation and community-corrections punishment model that empowers officers to create rewards and sanctions for offenders.

Andrew R. Strauss, *Losing Sight of the Utilitarian Forest for the Retributivist Trees: An Analysis of the Role of Public Opinion in a Utilitarian Model of Punishment*, 23 CARDOZO L. REV. 1549 (2002).

- Arguing that the juvenile justice system has become inflexibly retributive as the result of mounting political pressure and public misperception. Asserting that the law must return to utilitarian goals that seek to deter and rehabilitate criminal conduct.
- “The juvenile justice system has evolved over the past thirty years from a rehabilitative system to a punitive one, due in large part to a misplaced emphasis on public opinion. This change has been harmful both to society and the juvenile. [D]etermining what works, rather than by appeasing the public, is of premier importance.”

Steven L. Chanenson, *The Next Era of Sentencing Reform*, 54 EMORY L.J. 377 (2005).

- Advocating for an indeterminate sentencing system wherein a commission creates a presumptive minimum and maximum sentence and a system of parole release that allows judges and parole boards to tailor incarceration to the requirements of the offense and the individual characteristics and conduct of the offender.

Steven L. Chanenson, *Guidance from Above and Beyond*, 58 STAN. L. REV. 175 (2005).

- Advocating for the adoption of three sentencing “tools” in the wake of *Booker*: more thorough appellate review of sentences; reinstatement of parole release authority; and creation of “extended sentences review” for older offenders serving lengthy prison terms.

Aaron Xavier Fellmeth, *Civil and Criminal Sanctions in the Constitution and Courts*, 94 GEO. L.J. 1 (2005).

- Finding that federal courts draw too sharp a line between civil and criminal offenses when interpreting constitutional protections while federal government agencies increasingly impose severe “civil penalties” on individuals. Arguing that the courts and federal government need to reform criminal and civil sanctioning to ensure constitutional protections, proper deterrence, and basic fairness.

John Braithwaite, *A Future Where Punishment is Marginalized: Realistic or Utopian?* 46 UCLA L. REV. 1727 (1999).

- Arguing for restorative justice to bring together stakeholders (victims, offenders, communities) in search of outcomes that heal the hurt of crime, instead of responding with more hurt.

The Sentencing Project, *Incarceration and Crime: A Complex Relationship*

Available at: <http://www.sentencingproject.org/pdfs/incarceration-crime.pdf>

- “Incarceration does not always have a uniformly positive impact on reducing crime and that, therefore, other factors significantly affect crime trends.” *Id.* at 3.

- “Nationally, violent crime has declined by 33% and property crime has decreased 23% since 1994. During the same period incarceration rates rose by 24%.” *Id.* at 3. “Between 1991 and 1998, those states that increased incarceration at rates that were *less* than the national average experienced a *larger* decline in crime rates than those states that increased incarceration at rates higher than the national average.” *Id.*
- “Expanding the use of imprisonment inevitably results in diminishing returns in crime control. This is because high-rate and serious or violent offenders will generally be incarcerated even at modest levels of imprisonment, but as prison systems expand, new admissions will increasingly draw in lower-rate offenders.” *Id.* at 6.
- “The expenditure of \$1 million to expand mandatory minimum sentencing would result in a national decrease in drug consumption of 13 kilograms, while dedicating those funds to drug treatment would reduce consumption by 100 kilograms.” *Id.* at 8 (citing Caulkins, J.P., Rydell, C.P., Scwabe, W.L., Chiesa, J. (1997). *Mandatory Minimum Drug Sentences: Throwing Away The Key or The Taxpayers’ Money?* Santa Monica, CA: RAND.)

Nancy Lucas, *Restitution, Rehabilitation, Prevention, and Transformation: Victim-Offender Mediation for First-Time Non-Violent Youthful Offenders*, 29 HOFSTRA L. REV. 1365, 2001.

- “Restorative justice is characterized by the following three principles: First, crime is not, as is often wrongly assumed, primarily an offense against the state. Rather, it is a conflict between individuals resulting in injuries to victims, communities and the offenders themselves; only secondarily is it lawbreaking. Second, the overall aim of the criminal justice process should be to make peace between the parties, repair the harm caused by crime, and not to be obsessively concerned about punishment for punishment’s sake. Finally, the criminal justice process should not be “dominated by the government” to the exclusion of victims, communities, and the offenders themselves.” *Id.* at 1370.

Nora V. Demleitner, *Smart Public Policy: Replacing Imprisonment with Targeted Nonprison Sentences and Collateral Sanctions*, 58 STAN. L. REV. 338, 2005.

- “In contrast to many state and foreign systems that allow for fines, restitution orders, and community service as stand-alone sanctions, the Federal Guidelines permit them; only as part of a probation sentence. The federal criminal justice system only offers limited forms of alternative sanctions. Among the notable omissions are intensive probation with enhanced supervision of offenders and day fines that are based directly on the gravity of the offense and an offender’s economic situation.” *Id.* at 344.
- “Nonprison sentences allow, and even require, individuals to be employed, pay fines, and make restitution, pay taxes, and assist their families. Such demands are crucial to allowing them to regain their place in society.” *Id.* at 346.

O’Hear, supra note 44.

- “In contrast to mitigating offender characteristics and offense circumstances, the Guidelines fully reflect one aggravating characteristic of the defendant and a seemingly infinite and ever-increasing sea of aggravating offense circumstances. In assessing its work over the first fifteen years, the Sentencing Commission has identified some guidelines that produce sentences that are too severe, but none that are not severe enough. Thus, it is highly probable that the guideline range already takes into account whatever factor the government may argue for a sentence above the guideline

range, and it should be extremely difficult for a judge to justify a sentence higher than the guideline range as insufficient to meet the goals of sentencing.”

Hofer & Allenbaugh, *supra* note 58, at 83; Justice Stephen Breyer, *Federal Sentencing Guidelines Revisited*, 11 Fed. Sent. R. 180, **30, 35 (Jan./Feb. 1999)

- “As both Justice Breyer and the Commission’s Senior Research Associate note, . . . the Commission and appellate courts treated the departure power more restrictively than originally intended.”

American Bar Association Justice Kennedy Commission, *Report with Recommendations to the ABA House of Delegates* (August 2004).

Available at: sentencing.typepad.com/sentencing_law_and_policy/files/JusticeKennedyCommissionReports-11Aug2004

- “Our recommendation is that shorter period of incarceration should be prescribed for offenders whose crimes are not the most serious and do not pose the greatest danger to the community. We believe that the trend throughout the states is to recognize that the seriousness of the crime and the danger to the community are key factors in determining both whether incarceration is an appropriate sanction and how lengthy a sentence of incarceration is warranted.” *Id.* at 25.
- “The reality . . . is that well designed alternatives to incarceration that save money, protect the community and reduce recidivism are worth exploring once they have been shown to work.” *Id.* at 29.
- “If treatment works, reduces recidivism, and is cost-effective, it is a desirable alternative to incarceration for many low-level offenders.” *Id.* at 32.
- “Not all who violate a condition of parole require imprisonment. Imprisonment may be the correct sanction for violators who commit additional criminal acts or who pose a danger to the community, but a graduated system of sanctions may make as much sense in the parole/probation context as in the basic sentencing decision following conviction.” *Id.* at 34.

John J. Gibbons and Nicholas Katzenbach, Commission Co-Chairs, *Confronting Confinement: A report of the Commission on Safety and Abuse in America’s Prisons*, Vera Institute of Justice (2006).

Available at: http://www.prisoncommission.org/pdfs/Confronting_Confinement.pdf

- “What happens inside jails and prisons does not stay inside jails and prisons. It comes home with prisoners after they are released and with corrections officers at the end of each day’s shift. When people live and work in facilities that are unsafe, unhealthy, unproductive, or inhumane, they carry the effects home with them. We must create safe and productive conditions of confinement not only because it is the right thing to do, but because it influences the safety, health, and prosperity of us all.” *Id.* at 11.

Tip 7:
Prepare
Client for
Allocution



Formula for the Best Apology

1. Remorse
2. Responsibility
3. Make amends
4. Next time



Formula for the Best Apology

Do

Make it genuine. Your client's words, not yours.

Name the acts (pulled the trigger, stabbed, etc.)

Name the feelings (remorse, regret, sorrow, shame).

Name the victims and empathize their feelings (without analogy). Think broadly.

Don't

Re-write so much that it's your voice, not client's.

Don't say: I'm sorry "it" "the offense" happened.

Don't minimize.

Don't say: I'm sorry you feel. Try: I'm sorry I caused pain, sorrow, etc.

Before Prep

THE DEFENDANT: Your Honor, I want to say I take full responsibility for my actions and say I know I made a mistake, but I provide for my family, and it was a hard time I want to say, you know.

After Prep

THE DEFENDANT: I would first like to thank you for your time. I'd like to give you a little background about myself. My name is Jamarquis Robinson. I was born in Saginaw, Michigan. Even though I'm not the oldest, I feel responsible to provide for us all. I've been feeling that way since our mother died when we were young.

After Prep, cont.

the crime I committed that got me incarcerated because there really is no excuse. Truth is I made a mistake when I was 18. I take full responsibility for it and wish I could take it back. I'm thankful no one was physically hurt during the crime I committed. I would like to apologize for my actions to everyone that was affected as a result of my crime. I ask for forgiveness from the victims, victim's family, from my family, also. I will admit that growing up, I had the

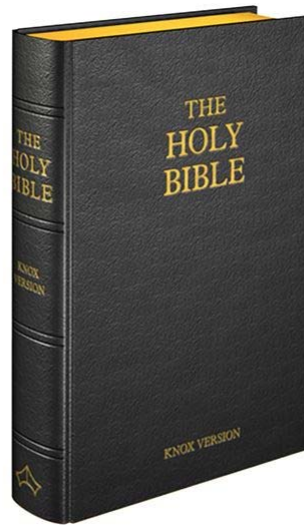
After Prep, cont.

family, also. I will admit that growing up, I had the wrong influences around me and that led me down the wrong path. All I want to do is provide for my family. If I could do it all again, I would do it the right way no matter how hard it seem.

How to Prepare?



Tip 8:
Fix the PSIR



The PSIR is a Hotbed of Errors

Inaccuracies
Irrelevant information
Personal Digs
Sarcasm
Half stories
“Negatively speaking...” and
“Positively speaking...”

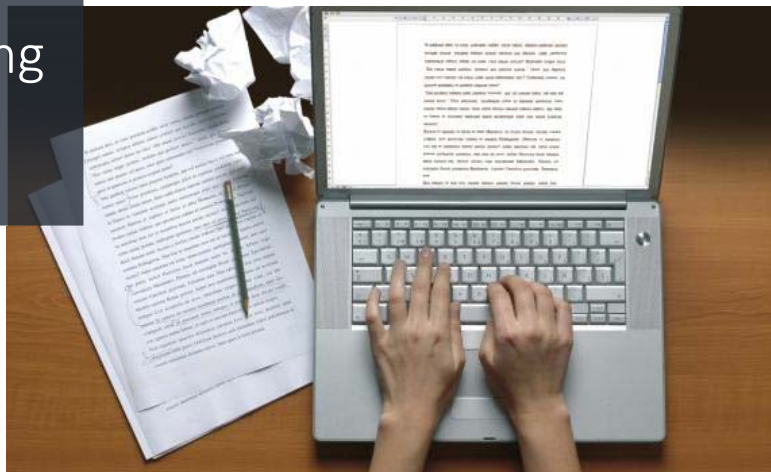


Object and Hold to Burden

People v Beck, __Mich__ (#152934 07-29-19): the trial court cannot use acquitted conduct against your client. The trial court is not permitted to find that acquitted conduct occurred by a preponderance of the evidence.

People v Butler, (Docket No. 151499) (2015): any prior crimes being used to score the variables must be proven by a preponderance of the evidence. The prosecution must prove by a preponderance that the crimes actually took place, that the defendant committed them, that they are properly classified as felony crimes against a person. *People v Hardy*, 494 Mich 430 (2013).

Tip 9: Sentencing Memo



Sentencing Memo Outline

Circumstances of Crime
 Guidelines & PSIR
 Social History
 Mental or Medical Health
 Incarceration Record
 Prior Record
 Family Support
 Remorse & Responsibility



- 2. This Court Must Impose a “Reasonable” Sentence Proportionate to Mr. Robinson and the offense.**
- 3. Jamarquis Robinson Grew Up in an Unstable Setting and Lost his Mother at a Young age.ⁱ**
- 4. As an Adolescent, Jamarquis Has Greater Potential for Rehabilitation and Diminished Culpability.**
- 5. Jamarquis Does Not Have a Prior Adult Criminal History.**
- 6. Jamarquis Has a Positive Institutional History.**
- 7. Jamarquis Accepts Responsibility and Expresses Genuine Remorse for this Offense.**
- 8. Jamarquis Has the Support of His Family.**

Socially, school did not provide Wesley much comfort. He was a relatively small child, according to Cynthia, and records show he had limited cognitive ability. His Full Scale Intelligence Quotient (FSIQ) has been measured at 81 in 2007 and 76 in 2010, indicating a borderline impairment. Cynthia reports that Wesley was



Family photo, 2002

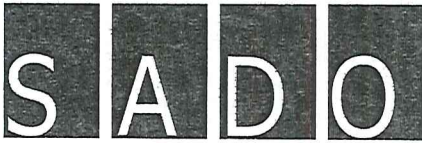
bullied almost as soon as he began school. She said he was "a sweet kid," who was "kind and befriended other kids who were bullied." They lived in a tough neighborhood and some neighborhood children would fight Wesley as he was coming home from school. She said the bullying became worse as time went on and his overworked DPS teachers did not intervene when kids teased him because he was not able to keep up with classroom instruction. She recalls that sometimes after she bought clothes for her son, "Wesley would give them away to help other kids that didn't have anything, so they didn't have to go through what he was going through."

A functioning report filled out by Wesley, which is undated, has few words and underscores the 2007 DPS finding in the SSD file that Wesley does not do well when required to interpret the meaning of "a series of printed words." For example, in response to a question about "personal care" and how his illness affects his ability to "dress, bathe, care for hair, shave, feed self, use the toilet," he answered: "cant read good have a hard time following directins (sic)." At the top of this document, he entered his zip code as his area code and then his phone number (with area code). The DPS record notes: "Wesley performed in the Extremely Low range on tasks that required him to correctly read a series of printed words as indicated by his Word Reading standard score (61). His skills in this area exceed those of only approximately 0.5% of students his age."

The one-page Case Analysis sheet dated 2/6/13, which closed Wesley's case, states that his Full Scale IQ is 76 or 81 and assigned a GAF score of 45 to 50. The final SSD document found the application "partially credible overall." It does not appear that Wesley and Cynthia appealed the denial, although it is possible they would have received benefits if they had, given the SSD doctor's report and Wesley's historic IQ and GAF scores.



Always hopeful that her son would graduate, Cynthia had his graduation photo taken in 2012



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March 19, 2019

Clerk
Saginaw County Circuit Court
Courthouse
111 South Michigan Avenue
Saginaw, MI 48602

Re: People v Jamarquis Robinson
Circuit Court No. 15-41859-FC

Dear Clerk:

Enclosed please find the Sentencing Memo for filing in your Court along with the Certificate of Service.

Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "M. David-Martin", written over a light blue horizontal line.

Marilena David-Martin
Training Director

Enclosure

cc: Saginaw County Prosecutor
Hon. Manvel Trice, III
Jamarquis Robinson
File

STATE OF MICHIGAN
IN THE SAGINAW COUNTY CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee

Lower Court No. 15-41859 FC

-vs-

Honorable Manvel Trice, III

JAMARQUIS KIANTE ROBINSON

Defendant-Appellant.

SAGINAW COUNTY PROSECUTOR
Attorney for Plaintiff-Appellee

MARILENA DAVID-MARTIN (P73175)
Attorney for Defendant-Appellant

SENTENCING MEMORANDUM

STATE APPELLATE DEFENDER OFFICE

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Mitigation Specialist

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Detroit, Michigan 48226
(313) 256-9833

STATE OF MICHIGAN
IN THE SAGINAW COUNTY CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee

Lower Court No. 15-41859 FC

-vs-

Honorable Manvel Trice, III

JAMARQUIS KIANTE ROBINSON

Defendant-Appellant.

CERTIFICATE OF SERVICE

Marilena David-Martin says that on March 19, 2019, she mailed one copy of Mr. Robinson's SENTENCING MEMORANDUM to the prosecutor Melissa Hoover at the address below and sent a copy via email to Ms. Hoover:

Saginaw County Prosecutor's Office
111 S. Michigan Ave
Saginaw, MI 48602



Marilena David-Martin (P73175)

STATE OF MICHIGAN
IN THE SAGINAW COUNTY CIRCUIT COURT

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee

Lower Court No. 15-41859 FC

-vs-

Honorable Manvel Trice, III

JAMARQUIS KIANTE ROBINSON

Defendant-Appellant.

SENTENCING MEMORANDUM

Jamarquis Kiante Robinson was 18 years old on October 4, 2015 when he and his 19-year-old co-defendant robbed a convenience store in Saginaw. Mr. Robinson was charged and convicted of 12 felonies stemming from the two-minute armed robbery: two counts of armed robbery, conspiracy to commit armed robbery, two counts of unlawful imprisonment, carrying a weapon with unlawful intent, and felony firearm for each of those offenses. At Mr. Robinson's original sentencing, his guidelines were scored at 108 to 180 months. He was sentenced to concurrent terms with a controlling minimum near the very bottom of the guideline range: 10 to 20 years, 10 to 15 years, and 2 to 5 years plus 2 years consecutive.

1. The Court of Appeals Remanded this Case for Resentencing

On appeal, Mr. Robinson challenged his convictions based on ineffective assistance of counsel and challenged the scoring of his sentencing guidelines. The Court of Appeals affirmed his convictions but remanded for resentencing and directed

Offense Variable (OV) 4, Psychological Injury to a Victim, to be scored at zero points. This reduces Mr. Robinson's guideline range to **81 to 135 months**.

The Court of Appeals rejected Mr. Robinson's challenge to the scoring of OV 13, "Continuing Behavior of Criminal Behavior," which would have further reduced his guidelines to 51 to 85 months.

2. This Court Must Impose a "Reasonable" Sentence Proportionate to Mr. Robinson and the offense.

In issuing its sentence against Mr. Robinson, this Court must impose a sentence that is proportionate to him as an individual and to the circumstances of the offense. After *Lockridge*, sentencing courts still must "consult the applicable guidelines range and take it into account when imposing a sentence." *People v Lockridge*, 498 Mich 358, 392 (2015). But courts need not articulate substantial and compelling reasons for departing above or below that range; rather, the sentence only has to be "reasonable." *Id.*

A sentence is reasonable if it is proportionate. The "principle of proportionality" requires that a sentence be "proportionate to the seriousness of the circumstances surrounding the offense and the offender." *People v Steanhouse*, 500 Mich 453, 474 (2017) quoting *People v Milbourn*, 435 Mich 630, 636 (1990).

Milbourn outlines several factors to consider when determining whether a sentence is proportionate: (1) the seriousness of the offense, (2) factors not considered by the guidelines, and (3) factors given inadequate weight by the guidelines in a particular case. *Milbourn*, 435 Mich at 660. Considering these factors and others,

Mr. Robinson asks this Court to impose a minimum sentence of 51 months (4.25 years).

3. Jamarquis Robinson Grew Up in an Unstable Setting and Lost his Mother at a Young age.ⁱ

a. Mr. Robinson grew up without a father and without stability.

Jamarquis was born in Saginaw on July 21, 1997 to 20-year-old Tara Robinson and an absent father, James Peoples. Jamarquis' siblings include older sisters Shateshia (same father), Taqueshia and Shaqueshianna Robinson (father, Reggie Bean) and younger siblings Scinterria, Scinacor, Scintayjah, and Scintayvian McMullen, all fathered by Scinacor McMullen. Jamarquis and his seven siblings were raised primarily by their mother, in homes that lacked any consistent, positive male role models. Jamarquis' father, Mr. Peoples, lives in Saginaw, MI and has made no effort to have a relationship with Jamarquis. Jamarquis' mother started dating Scinacor McMullen when Jamarquis was just a baby, but Mr. McMullen was incarcerated on several occasions, which left Jamarquis without a father-figure.

Jamarquis has never had a stable home. He recalled living in at least nine different homes before the age of fifteen. He and his mom and siblings moved around often, frequently staying with family in overcrowded housing or in various houses owned by Scinacor McMullen. They often had to move after Mr. McMullen became

ⁱ The following narrative was compiled with information obtained through in-person and video visits with Jamarquis at the St. Louis Correctional Facility in St. Louis, MI, in interviews with Mr. Robinson's aunt, Andolyn Robinson, sisters Shateshia Robinson and Scinterria McMullen, girlfriend Cierra Long, and his deceased mother's long-time boyfriend Scinacor McMullen, and through review of Saginaw Public School records.

incarcerated because the expenses became too much for Ms. Robinson to maintain on her income alone.

The transient lifestyle made it difficult for Jamarquis to form close bonds with his peers, neighbors, and teachers, and negatively affected his education. Research has shown that housing instability is detrimental to a youth's education: "students generally lose about three months of reading and math learning each time they switch schools." (Appendix A: "Student Mobility: How It Affects Learning.")

Jamarquis struggled with reading and math from a young age and had an Individual Education Plan (IEP) from second grade through tenth grade. The IEP was put in place after his mother noticed he was behind academically and requested he be evaluated for special education. According to Saginaw Public School records, one of Jamarquis' sisters, more than one maternal aunt, and his biological father, have learning disabilities.

b. As a child, Jamarquis took on a lot of responsibility within the household.

Often, in poverty-filled homes, a male child is required to fill the void of an adult male figure. Although Jamarquis is the fourth born child, he is the first male child. He said he was around 10 years old when he first felt a need to provide for his family. He took it upon himself to do chores around the house and look after and care for his younger siblings. He was about 12 years old when he remembers his mother telling him he was the man of the house. He took that responsibly seriously. Not one or two, but three men walked out of the children's lives as they were growing up,

burdening Jamarquis with the responsibility of taking care of the family. Sometimes, he had to make money for food and things his family and siblings needed.

c. When Jamarquis was 15, his mom died unexpectedly.

By all accounts, Ms. Robinson was the backbone of her family. She worked long hours as a Certified Nursing Assistant to provide for eight children as best she could. Despite working long hours, Ms. Robinson was heavily involved in her children's lives. During an interview, Ms. Robinson's sister Andolyn Robinson wiped away tears as she explained, "You would have loved my sister! Tara took care of all her kids. She made them help her and clean up around the house. They were all close to her."

In 2013 when Jamarquis was 15 years old, Ms. Robinson had finally landed her family in a new home of their own to give them more stability. It was then that tragedy struck. While attempting to get the house ready—moving appliances and cabinets and doing general renovations around the new house—dust got into Ms. Robinson's wind pipe and sent her into a severe asthma attack from which she never recovered. She passed away on March 5, 2013. Mr. McMullen was present during the asthma attack. He reflected that "Tara went outside and sat on the porch. Before the ambulance got to the house, her lips had turned purple." Tara was only 36 years old at the time.

d. Following his mom's death, Jamarquis once again experienced instability

It is fair to say that Jamarquis' life before and after his mother's death was as different as night and day. According to Jamarquis, his mother was everything to him. She gave him confidence, hope, and inspired him to do well. He went to school

and tried to do well to make her proud. He played on the football team as a linebacker and receiver for Saginaw High School and he had dreams of one day playing in the NFL.

Jamarquis' family described him as a charismatic young man who values family and as a good person with a strong desire to help others. Aunt Andolyn described him as a happy person. She stated, "If you were down, he'd try to make you laugh." His older sister, Shateshia Robinson, mentioned he enjoyed family gatherings when his mother would cook big meals. According to Aunt Andolyn, Jamarquis was always "up under his mom," meaning that his mother was the person he would consistently seek advice and comfort from and confide in during times of need.

Following Ms. Robinson's death, her children, ranging from 10-18 years of age, were split up and stayed with various family and friends. Jamarquis stayed with Aunt Andolyn at roughly four different homes. For a short period, he lived with his grandmother, Gwendolyn Robinson. He also sometimes stayed with his aunt, Twanna Robinson. He lived in at least six different homes in about two years. When asked about moving around so much, he stated he was often "uncomfortable" and that "it was hard sometimes, but I try not to think about it." Aunt Andolyn explained that Jamarquis "shut everything off" after he lost his mother. Even though other relatives tried to give him attention, it could not replace the affection he received from his mom.

Losing his mom, his main source of security and stability, left Jamarquis heartbroken and void of parental guidance at only 15 years old. The unconditional love and guidance of his mother was unmatched. Many female relatives were around,

but the strong, maternal influence Jamarquis depended on and trusted was now gone. According to Aunt Andolyn, “he still went to school, but would not play sports. He said he didn’t like it no more.”

The emotional turmoil and displacement he experienced, combined with the responsibility he felt to care for his siblings, left him vulnerable to the influence of the wrong people. Jamarquis reflected that “if there was a father figure, the weight wouldn’t have been on me as much. When she passed, the weight was definitely on me.” This was one reason he ended up at the Stop and Shop on October 4, 2015.

4. As an Adolescent, Jamarquis Has Greater Potential for Rehabilitation and Diminished Culpability.

Mr. Robinson was only 18 years old at the time he committed this armed robbery offense. Research shows that adolescents have diminished moral culpability and that youth is a factor that should be taken into consideration at sentencing.

United States Supreme Court law and scientific findings, such as current research on brain development, suggest that penal consequences for young people should be approached differently. *Miller v Alabama*, 567 US 460, 479-480; 132 S Ct 2455 (2012); *Graham v Florida*, 560 US 48; 130 S Ct 2011 (2010). The United States Supreme Court acknowledged that “the qualities that distinguish juveniles from adults do not disappear when the individual turns 18.” *Roper v Simmons*, 543 US 551, 574; 125 S Ct 1183 (2005). “[A] growing body of research has shown that the adolescent brain is not fully developed until a person is about twenty-five, and that as it’s developing, many things can go wrong that lead to psychiatric and behavioral disorders.” Davis, *The Brain Defense* (New York: Penguin Press, 2017), p 97.

The brain continues to develop into an individual's twenties. See Pimentel, *The Widening Maturity Gap: Trying and Punishing Juveniles as Adults in an Era of Extended Adolescence*, 46 Tex Tech L Rev 71, 83-84 (2013) ("Neuroscience tells us that we should expect some irrational, emotion-driven behavior from emerging adults, those aged eighteen to twenty-five, and that it is not until their late twenties that it is reasonable to expect them to have the brain development necessary to behave like fully rational adults."); Shust, *Extending Sentencing Mitigation for Deserving Young Adults*, 104 J Crim Law & Criminology, 667, 686 (2014).

The very authors relied upon by the Supreme Court in *Miller* have authored a law review article encouraging courts to create a "transitional legal category" of "young adulthood" for individuals aged 18-years-old to 21-years-old. Scott et al., *Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy*, 85 Fordham L Rev 641 (2016).

Jamarquis falls within that category: a group of young people whose brain maturation is continuing such that science would support a recognition of diminished culpability. Dr. Ruben C. Gur, Director of the Brain Behavior Laboratory at the Neuropsychiatry Section of the University of Pennsylvania School of Medicine, has stated that "[t]he evidence now is strong that the brain does not cease to mature until the early 20s in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable." Ruben C. Gur, *Declaration of Ruben C. Gur, Ph.D., Patterson v. Texas, Petition for Writ of Certiorari to the United States Supreme Court* (2002). The

scientific research on which *Graham* relied reveals that the frontal lobe, the locus of executive functions such as reasoning, advanced thought, and impulse control, is the last part of the brain to develop. See, *Adolescence, Brain Development and Legal Culpability*, American Bar Association, Juvenile Justice Center 1-3 (Jan. 2004).

In fact, “researchers have found that eighteen – to twenty-one-year-old adults are more like younger adolescents than older adults in their impulsivity under conditions of emotional arousal.” Scott, *Young Adulthood as a Transitional Legal Category*, 85 *Fordham L Rev* 641, 642 (2016). This age range has also shown to be a time frame of peak risk behavior. Arnett, *Emerging Adulthood*, *Am Psych* (2000) p 475. Despite the heterogeneity of the class of individuals immediately following juveniles, “emerging adulthood has become a distinct period of the life course for young people in industrialized societies.” *Id.* at 479.

As there is evidence that one’s brain continues to mature past the age of twenty, it is unconscionable to apply the same minimum sentencing guideline range to all offenders, regardless of other mitigating factors such as youth. While *Miller* addressed the constitutionality of mandatory sentences of life without the possibility of parole for juvenile homicide offenders (under the age of 17), its focus on the sentencing factors of a young person’s chronological age, family and home environment, and greater capacity for rehabilitation are directly relevant here.

Jamarquis was 18-years-old at the time the offense. Therefore, his brain was, and still is, continuing to mature. Young offenders, particularly those like Jamarquis who have shown no propensity to commit violent, unlawful acts, cannot fairly be

expected to be capable of the same level of control over, or responsibility for, their behavior as adult offenders, and should be viewed as having more rehabilitative potential than adult offenders. At the very least, “criminal procedure laws that fail to take defendants’ youthfulness into account at all would be flawed.” *Graham*, 560 US at 76.

Jamarquis’ youth matters and is a factor this Court should take into consideration at sentencing.

5. Jamarquis Does Not Have a Prior Adult Criminal History.

Jamarquis has only one prior offense, which occurred while he was a juvenile.

In May 2014, when he was 16 years old, Jamarquis was placed on juvenile probation for resisting and obstructing an officer. Aunt Andolyn recalled getting a phone call stating the police were at her home interrogating her nieces and nephews without a guardian present. The police were responding to a complaint about an abandoned van with a broken window. She observed Jamarquis asking why the police had placed his sister in the back of a police car while Jamarquis recorded the incident with his cell phone. Jamarquis, his sister, and Aunt Andolyn were all arrested and received probation for resisting and obstructing an officer. Jamarquis successfully completed probation with no violations. He has no other criminal history.

6. Jamarquis Has a Positive Institutional History.

Jamarquis has been incarcerated since the day of the offense—October 5, 2016. His institutional history is positive and he has not been a problem for corrections staff.

After being sentenced, Jamarquis was sent to the Charles Egeler Reception & Guidance Center in Jackson for intake, assessment, and classification. There are five security level designations for the Michigan Department of Corrections (MDOC): Level I, Secure Level I, Level II, Level IV, and Level V. Level I is the least restrictive; Level V is the most restrictive. Based on the MDOC Security Classification Initial Screening conducted on July 13, 2016, Jamarquis scored nine points of a possible 35, points making his management a Level II. The initial screening for management level classification considers the offense, prior convictions, behavior during prior incarcerations, and behavior in jail.

An individual who is not within seven years of his or her earliest release date or has not served at least three years of their controlling sentence requires Level IV confinement. Because Jamarquis' earliest release date was in 2027 and because he had only served two years of his controlling sentence, he was placed in confinement Level IV. Within the MDOC, there is a lack of programs and educational opportunities at the Level IV confinement level.

Jamarquis has received only 3 misconducts over the course of his near 2 ½ years in the MDOC and has been ticket free since September 2017. Jamarquis was transferred to the Saginaw Correctional Facility on July 26, 2016, when he was 19 years old. While there, he received Class I misconduct violations for possession of prison alcohol, getting a tattoo, and fighting. In September 2017, Jamarquis was transferred to St. Louis Correctional Facility and has not received a ticket of any kind since that time.

The MDOC recognizes that although receiving a misconduct report while incarcerated is not inevitable, it is highly likely for new and young prisoners:

MDOC experience indicates that young and/or newly incarcerated prisoners often account for a significant number of the misconducts that are issued. This may be due to initial failure to adapt to incarceration, immaturity, or a fear of being labeled as weak.²

It is common for younger individuals to get tickets during their first several years of incarceration. Generally, youthful offenders may have a general disrespect for the rules and they may also just be trying to navigate the facility while surrounded by adult offenders.

A Security Classification Review Screening took place on August 27, 2018 and Jamarquis' Management Level changed from Level II to Level I. Nevertheless, his confinement level stayed at Level IV due only to his length of incarceration. Jamarquis is currently eligible for reclassification to a Level II facility and plans to take advantage of additional programming when he is transferred.

7. Jamarquis Accepts Responsibility and Expresses Genuine Remorse for this Offense.

Counsel has known Jamarquis for 3 ½ years. We have had many in-person and video visits and phone calls over that time. Jamarquis has continuously expressed remorse and responsibility for the offense and has taken his time in prison to reflect on his life's path. During numerous visits with Jamarquis, he often expressed remorse for his actions. "I needed money for my family but looking back I would have done

² Michigan Department of Corrections (2014) MDOC Security Classification Manual.

things differently. I know what I did was wrong.” When asked about his current state of mind, he stated “I just want to be a better person for myself and my family.” Jamarquis has a better understanding of how he got where he is today and where he wants to go in the future. He will address the court in his own words at the time of sentencing.

8. Jamarquis Has the Support of His Family.

Jamarquis has the support of his siblings, Aunt Andolyn, and Grandmother Gwendolyn. They regularly stay in contact with him and will continue to do so. His sister, Scinteria, has submitted a letter of support, attached as Appendix B.

Conclusion

A minimum sentence of 51 months is proportionate to the offense and to Jamarquis. Before the death of his mother, he was an average kid who enjoyed playing sports and spending time with family and friends. He grew up in an unstable environment and took on a lot of responsibility as a child. While moving was difficult, he handled it in stride under the care of his loving mother. There is no doubt that when his mother died, Jamarquis was significantly impacted. He reacted in a counterproductive manner to this loss and the heightened responsibility of taking care of his family. His decision to commit this crime was one of desperation and illustrative of a lack of direction; not of malice or malevolence.

Given the opportunity, Jamarquis can live a positive and productive life. Jamarquis has matured and his behavior has improved significantly since entering

the MDOC. His MDOC record shows more than one year of good behavior and significant strides toward his goal of obtaining a GED.

Jamarquis lacks a prior criminal history and his behavior while incarcerated shows he is capable of following the rules and respecting authority. He also expresses genuine remorse and responsibility for this offense.

Jamarquis is a promising young man with a bright future ahead of him. Considering his young age at the time of the offense, a minimum sentence of 51 months (plus 2 years consecutive) would provide Jamarquis with the chance to contribute to his community in meaningful ways while in his twenties.

Respectfully submitted,

STATE APPELLATE DEFENDER OFFICE

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Date: March 19, 2019

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Appendix A

Student Mobility: How it Affects Learning

Student Mobility: How It Affects Learning

By Sarah D. Sparks

It's always tough to be the new kid in the middle of the school year: to find new friends, adapt to new teachers and rules. But for more than 6.5 million students nationwide, being the new kid can be a frequent occurrence—and one that exacts a cost to their social and academic development and that of their classmates.

As more states begin to use longitudinal data to improve schools under the Every Student Succeeds Act, a growing body of research suggests student mobility may be a key indicator to identify vulnerable students and keep them on a path to academic achievement.

"To be sure, multiple moves are a dangerous signal, but even one move increases the [student's] risk of not graduating or getting delayed in graduating," said Russell Rumberger, a research professor at the University of California, Santa Barbara, who studies dropout risks and student mobility.

What follows is an overview of the big trends, opportunities, and concerns associated with student mobility. Links to additional resources are included in each section for those who would like to dig deeper.

What Is Student Mobility?

In K-12 education, "student mobility," also called "churn" or "transience," can include any time a student changes schools for reasons other than grade promotion, but in general it refers to students changing schools during a school year. It may be voluntary—such as a student changing schools to participate in a new program—or involuntary, such as being expelled or escaping from bullying. Student mobility is often related to residential mobility, such as when a family becomes homeless or moves due to changes in a parent's job.

School mobility refers to the frequency of such moves among students in a particular classroom,

Jump to a Section

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- > **Who Is Likely to Be Highly Mobile?**
- > **How Does Mobility Affect Student Learning?**
- > **What Does the Every Student Succeeds Act Say About Student Mobility?**
- > **What Can Be Done to Support Highly Mobile Students?**

Related Video

school, or district. High churn in schools not only can hurt the students who leave, but also those who remain enrolled. A **2014 report by the Governor's Office of Student Achievement in Georgia** found schools with higher concentrations of mobile students had higher percentages of students with disabilities and fewer students in gifted education programs.

In a report on student mobility by the National Academy of Sciences, Chester Hartman, the research director for the Poverty and Race Research Action Council in Washington, noted that high-poverty urban schools can have more than half of their students turn over within a single school year.

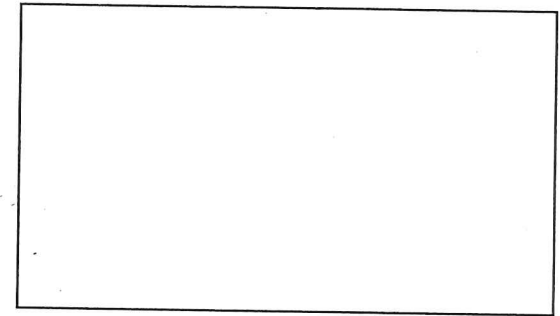
"It's chaos," he said in the 2010 report. "It makes all the reforms—smaller classes, better-trained teachers, better facilities—irrelevant."

In fact, in a study of 13,000 Chicago students, University of Chicago researcher David Kerbow found those who had changed schools four or more times by 6th grade **were about a year behind** their classmates—but students in schools with high churn were a year behind those in more stable schools by 5th grade.

"It is unclear how school-based educational programs, no matter how innovative, could successfully develop and show long-term impact" in a high-churn school, Kerbow concluded.

Who Is Likely to Be Highly Mobile?

The most common causes of student mobility are residential moves related to parents' jobs or other financial instability. A 2010 Government Accountability Office study followed students who entered kindergarten in 1998 through 2007. It found 13 percent of students changed schools four or more times by the end of 8th grade, and highly mobile students were disproportionately more likely to be poor or black than students who changed schools twice or fewer times. The same study found families who did not own their own homes made up 39 percent of the most highly mobile students.



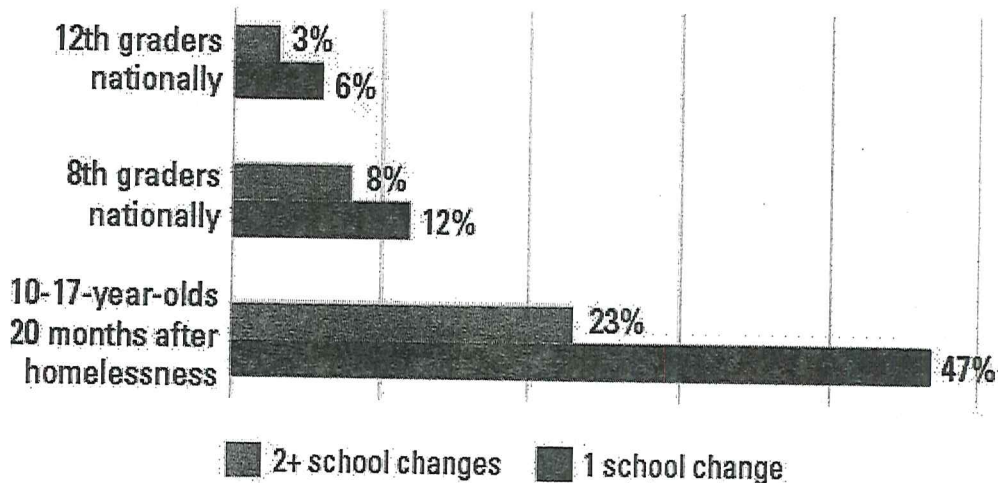
In rural Vermont, a significant number of students move around the area with their families, often needing to switch school districts as a result.

Superintendent Jay Nichols, of the Franklin Northeast Supervisory Union, explains how student mobility is a problem in his district. **Watch more Education Week videos.**

Similarly, a 2015 state policy report in Colorado, which tracks student mobility in its districts, found mobility rates in 2014-15 ranged from more than 17 percent for students in poverty to more than a third of migrant and homeless students, and more than half of all students in the foster care system.

Homelessness and Student Mobility

Students who were previously homeless continue to be at higher risk of changing schools nearly two years after gaining stable housing, according to researchers.



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That reflects national trends. Homeless students are likelier than other students to change schools not just several times in their school career, but multiple times in a single year. Also, they remain more mobile than other students even after their families find stable homes. A June report from the U.S. Department of Housing and Urban Development found that 20 months after regaining permanent housing, formerly homeless adolescents were more than four times as likely to change schools at least once than peers who had not been homeless.

“Outside the military, where families don’t know people, they don’t have those support systems,” Rumberger said.

How Does Mobility Affect Student Learning?

Even normal transitions—at the start of school, 6th and 9th grades, for example—can cause some students to stumble. Prior research has found students who

attended K-8 schools have slightly higher academic achievement than those who attended 6-8 middle schools, and students are at higher risk of dropping out or having behavior issues during transition years like 9th grade.

Various studies have found student mobility—and particularly multiple moves—associated with a lower school engagement, poorer grades in reading (particularly in math), and a higher risk of dropping out of high school.

While research has found students generally lose about three months of reading and math learning each time they switch schools, voluntary transfers, which are more likely to happen during the summer, cause less academic disruption and may be associated with academic improvement if they lead to better services for the student.

Mobility can be particularly hard on children in the early grades, as they learn foundational skills. A 2015 New York University study found that out of 381 low-income, predominantly ethnic-minority students in Chicago, 327 changed schools at least once from kindergarten through 4th grade, and 40 students transferred three or more times. The more often students moved, the lower they scored on both the state standardized math test and on teacher observations of the students' critical thinking.

What Does the Every Student Succeeds Act Say About Student Mobility?

Not much. Charter school authorizers must include rates of student attrition as part of the accountability metric for schools, but school mobility is not required for accountability for other public schools under ESSA.

For homeless students, **the law requires districts** to try to reduce student mobility by keeping a homeless student in the original school unless the student or a parent or guardian requests a transfer. ESSA requires districts to track academic achievement of homeless and foster students.

For students of military families, ESSA also requires schools to use a military-student identifier for students whose parents are in the active or reserve military, or in the National Guard. The identifier is intended to allow educators, parents, and military leaders to track how military-connected students achieve across multiple schools.

What Can Be Done to Support Highly Mobile Students?

States and districts are experimenting with a number of policies and programs intended to stabilize school populations and buffer the effects of student mobility. A 2016 study of Nevada schools found that regardless of students' risk of attrition, more-equitable school policies can help reduce churn; higher levels of racial segregation, particularly in academic programs, predicted churn.

Some that have shown promise include:

- **Better student data transfer:** There are some national systems designed to follow students in traditionally transient communities, such as the Migrant Student Data Exchange for the children of agricultural workers. As more states develop longitudinal databases with personal student identifiers, other systems are being developed for military, homeless, and foster care system youths.
- **Quick turnaround for student records:** Every state and the District of Columbia have signed onto the **Interstate Compact on Educational Opportunity for Military Children**, which lays out guidelines for school districts to send unofficial copies of all student records to parents within 10 days to help them enroll their students at the new school, and provide official records to the school receiving the student. The compact also calls for the student's new school to accept prior school placements for honors classes, prerequisites, and programs.
- **Flexible enrollment:** Attendance boundaries often force students to change schools when they change addresses, even if the student is still close enough to travel to his or her current school. A 2013 report by the Federal Reserve Bank of Boston found these enrollment requirements **exacerbate the disruptions that students face** from home foreclosures and other forced family moves. By contrast, family moves that did not require students to change schools had "negligible effects." This and other studies suggest that more-flexible enrollment policies that allow students to finish out the school year after a move—or nonresidential enrollment in general—could reduce mid-year school transfers.

Similarly, Kansas City, Mo., schools are developing a central database of student records to allow faster enrollment, and a smartphone app to allow parents to see a list of available schools and resources for smoothing a student's transition to a new school.

- **Interagency supports:** Because student mobility often results from family instability, school leaders who want to make their campuses more stable are experimenting with broader, multipronged supports.

Kansas City, Mo., for example, **held a citywide summit on student mobility** in 2015. As a result, schools identified at-risk students and paired them with both peer and adult mentors to meet several times a week to discuss the students' sense of belonging at their schools, everyday challenges and supports, and to reflect on the students' behavior, attendance, and academic performance each week. The plan also would enable parents of students in poverty to go to "one-stop shops" throughout the district that could provide resources for job placement, adult education, and aid for housing or utilities.

Additional Resources

- **Student Mobility: Exploring the Impacts of Frequent Moves on Achievement: Summary of a Workshop**
- **Many Challenges Arise in Educating Students Who Change Schools Frequently**
- **Adolescent Well-Being After Experiencing Family Homelessness**
- **Data Are Critical for High-Mobility Students (*Education Week Commentary*)**

How to Cite This Article

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Appendix B

Letter of Support – Scinterra McMullen

October 24, 2018

Dear Judge:

I am Scanterna Mcmullen, the sister of Jamarques Robinson. I help and support my brother when I can. I send him secure packs and sometimes even a couple of dollars. I rarely have time to come see him because I am always working. He call and we talk about everything, from younger days til now. There was never a dull moment with him around. What's a sister without her big brother?!

Since My brother has been incarcerated he has changed tremendously. He seems to be very humble and better than he's ever been. Everytime we talk he has something positive to say and we always say a prayer over each other. He is currently in school trying to achieve goals he has had planned for a long time. When I talk to him I know that I am going to have a great day. He still wants me doing good, even if we're miles apart

My brother has never told me anything wrong, and I'll always take advice from him.

Thank you, for your time and consideration.

Sincerely, Scinterna Mcnullen

Scinterna Mcnullen

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Tip 10:
Ask and
Advocate



Give a Strong Ask

So I would ask the Court to look at a sentence at the low to mid range of the guidelines.



Know When to Ask for Community

Intermediate sanctions and straddle cells

Social Science – children of incarcerated parents

Find treatment

Find employment



You can't get what you don't ask for.



. . . Or Not

Thoughts?

Marilena David-Martin | mdavid@sado.org

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