

Sentencing Mitigation Techniques

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Developing Mitigating Evidence *cont.*

- ▶ The Basics
- ▶ Identify Medical Concerns
- ▶ Identify possible mental health or mental disability issues
- ▶ Explore possible abuse

Drugs and Alcohol Use

“We . . . need a cultural shift in how we think about addiction. For far too long, too many in our country have viewed addiction as a moral failing. . . We must help everyone see that addiction is not a character flaw – it is a chronic illness that we must approach with the same skill and compassion with which we approach heart disease, diabetes, and cancer.”

U.S. Surgeon General Vivek Murthy, MD., M.B.A.

Developing Mitigating Evidence *cont.*

- ▶ Drugs and Alcohol Use
- ▶ Identify Environmental Concerns
- ▶ Court History
- ▶ Community History



Your Client needs a Plan

The Sentencing Memorandum

Allocution

ALLOCUTION *CONT.*

What Works?

ALLOCATION *CONT.*

What Doesn't?



ALLOCUTION THEMES

Remorse & Empathy

ALLOCUTION THEMES

Seriousness of Offense
& Just Punishment

ALLOCATION THEMES

Respect for the Law

ALLOCATION THEMES

Rehabilitation

ALLOCATION THEMES

Deterrence

ALLOCATION THEMES

Forward Thinking

ALLOCATION THEMES

Miscellany

ALLOCUTION *CONT.*



ALLOCUTION *CONT.*



ALLOCATION *CONT.*

Should your Client
Allocute?



myths & facts

**Why Incarceration Is Not the Best Way
to Keep Communities Safe**

Myth: “The use of jail and prison is the best way to prevent crime.”

- ▶ Those confined to prison recidivate at a much higher rate than those sentenced to community corrections
- ▶ The vast majority of people in jails and prisons do not receive the treatment and services they need to live a crime-free lifestyle.
- ▶ Harsh penalties do not improve long-term outcomes

Myth: “Community corrections does not work.”

- ▶ Community supervision programs can reduce the risk of recidivism by 10 to 30%.
- ▶ Treatment services can reduce recidivism by 10 to 30%.

Myth: Community supervision is soft on crime.”

- ▶ Our clients think “doing time” is easier than supervision.
- ▶ Treatment-oriented sanctions are perceived as punitive.
- ▶ Repeat prison-goers are less likely to view prison as punitive.

Myth: “Crime victims don’t support rehabilitation and treatment.”

- ▶ Crime victims support rehabilitation, perhaps even more so than the general public.
- ▶ A majority of the American public favors alternatives to incarceration and favors spending resources on rehabilitative services

U.S. Department of Justice
Office of Justice Programs
National Institute of Justice



NATIONAL INSTITUTE OF JUSTICE FIVE THINGS

ABOUT DETERRENCE

- 
- ▶ The *certainty* of being caught is a vastly more powerful deterrent than the punishment.
 - ▶ Sending an individual convicted of a crime to prison isn't a very effective way to deter crime.
 - ▶ Police deter crime by increasing the perception that criminals will be caught and punished.
 - ▶ Increasing the severity of punishment does little to deter crime.



The seal of the United States Sentencing Commission is circular. It features an eagle with spread wings perched on a shield. The shield has a blue field with white stars and a red field with a white star. The words "UNITED STATES SENTENCING COMMISSION" are inscribed around the perimeter, with a small star at the bottom.

**REPORT TO THE CONGRESS:
CAREER OFFENDER SENTENCING ENHANCEMENTS**





Career offenders with violent instant offenses or a violent priors generally:

- ▶ have a more serious and extensive criminal history,
- ▶ recidivate at a higher rate than drug trafficking only career offenders, and
- ▶ are more likely to commit another violent offense in the future.



The career offender directive should be amended to differentiate between career offenders with different types of criminal records, and is best focused on those offenders who have committed at least one “crime of violence.”



Transforming Prisons, Restoring Lives

Final Recommendations of the Charles Colson Task Force on Federal Corrections

January 2016

Recommendations



- ▶ Reserve prison for the most serious federal crimes
- ▶ Maintain drug mandatory minimum penalties for only the most serious; revise Guidelines accordingly
- ▶ Repeal man-mins for drug offenses, except for drug kingpins
- ▶ Revise the Guidelines to better account for role in offense and culpability, while considering alternatives to incarceration for lower-level drug trafficking offenses

