

# Effective Mitigation

## PREPARING A DEFENDANT FOR SENTENCING

TARGET LIFE ZONE	KEY QUESTIONS or (TASK)	NEEDED AT SENTENCING
<b>1. COMMUNITY SUPPORT</b>		
<p><b>Develop strength of relationships</b> in family, work, education, community, religion, and leisure activities.</p> <p><b>Why?</b> Positive relationships with friends and family <b>encourage good behavior</b>. Conversely, relationships with criminal friends and relatives can sabotage success.</p>	<ul style="list-style-type: none"> <li>▪ What do you do for fun?</li> <li>▪ Who in your family or of your friends is a good influence on you?</li> <li>▪ Who would be willing to write a letter of support for you?</li> <li>▪ Which of these sounds interesting to you:               <ul style="list-style-type: none"> <li>○ Regularly attending <b>church or AA/NA?</b></li> <li>○ Identifying a <b>mentor at work?</b></li> <li>○ <b>Volunteering</b> in community work?</li> <li>○ Joining an <b>organized activity?</b></li> <li>○ Taking a <b>class?</b></li> <li>○ Joining an organized <b>athletic activity</b> (church softball league)?</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ Proof of enrollment in and attendance at an organized activity</li> <li>▪ Program literature</li> <li>▪ Letters of support</li> <li>▪ Have defendant bring people willing to be character references to court</li> <li>▪ AA/NA sign in sheets</li> </ul>
<b>2. RESIDENCE PLAN</b>		
<p><b>Residential options:</b> Where/with whom will the defendant live during the sentence (family home, group home, half-way house, secure or non-secure residential treatment center?)</p> <p><b>Why?</b> Stable and comfortable residence <b>reflects ties to the community</b> and participation in normal society. Unstable residence may sabotage the defendant's efforts to maintain employment and sobriety.</p>	<ul style="list-style-type: none"> <li>▪ Tell me about your home (include <b>family</b> in the discussion).</li> <li>▪ (Evaluate whether this home will be <b>acceptable to probation</b>)               <ul style="list-style-type: none"> <li>○ Does your home have a phone (for house arrest)?</li> <li>○ Do you live in a high crime/drug related area?</li> <li>○ Do you consider this your legal residence?</li> <li>○ Will you be able to live there for at least 2 years?</li> <li>○ How do you get along with the lease holder/home owner?</li> </ul> </li> <li>▪ What alternatives do you have?               <ul style="list-style-type: none"> <li>○ Family, friends?</li> </ul> </li> </ul> <p>(Where appropriate) residential treatment centers or halfway houses?</p>	<ul style="list-style-type: none"> <li>▪ Proof of residence</li> <li>▪ Letter of support from landlord</li> <li>▪ Phone bill</li> <li>▪ Rent receipt</li> <li>▪ Literature from the halfway house.</li> </ul>

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<b>3. SUBSTANCE ABUSE</b>															
<p><b>Why?</b>  <b>Assessment and Treatment</b> for conditions that give rise to, or increase the likelihood of, criminal behavior.</p>	<ul style="list-style-type: none"> <li>▪ Were you using drugs or alcohol in the commission of the offense?</li> <li>▪ (If this was a property crime, ask where the proceeds went.)</li> </ul>		<ul style="list-style-type: none"> <li>▪ Completed assessments</li> <li>▪ Documentation of his/her acceptance into a program</li> <li>▪ Brochure or literature about the treatment</li> </ul>												
<b>4. MENTAL HEALTH</b>															
<p><b>Why?</b>  Offenders enrolled and participating in treatment prior to sentencing are more likely to successfully complete the ordered treatment component.</p>	<ul style="list-style-type: none"> <li>▪ (Was this offense an irrational act?)</li> <li>▪ Have you ever been in treatment?</li> </ul>		<ul style="list-style-type: none"> <li>▪ Documentation of enrollment and participation in treatment</li> <li>▪ Letter of progress from the treatment provider</li> </ul>												
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<b>5. RESTITUTION</b>															
<p><b>Why?</b>  Most probation revocations involve failure to pay fees. The amount of restitution ordered should be related to an offender's ability to pay. The amount may be far below fair value of damage or loss. Victim restitution may be in a form that addresses needs or desires of the victim: stay away from the victim; pay for counseling, etc.</p>	<ul style="list-style-type: none"> <li>▪ Can you pay restitution?</li> <li>▪ Do you have any property that you can liquidate to pay restitution?</li> <li>▪ Can you borrow the money?</li> <li>▪ (If the restitution exceeds \$5,000) Would you be willing to seek debt counseling?</li> <li>▪ (Will the DA accept partial repayment?)</li> <li>▪ (Are there alternatives to restitution in this case?)</li> </ul>		<ul style="list-style-type: none"> <li>▪ Proof of the defendant's ability to pay</li> <li>▪ Proof of debt counseling</li> <li>▪ Pay stubs</li> <li>▪ Letter of support from the defendant's employer</li> <li>▪ Mediated restitution settlement</li> </ul>												

<b>6. Special Considerations:</b>	
Medical Problems	<ul style="list-style-type: none"> <li>▪ Medical records</li> <li>▪ Statement from doctor</li> </ul>
Transportation	<ul style="list-style-type: none"> <li>▪ Work out a plan for transportation to and from the probation office</li> </ul>
Immigration problems	<ul style="list-style-type: none"> <li>▪ Immigration papers</li> </ul>
Transfer of probation via interstate compact	<ul style="list-style-type: none"> <li>▪ Talk with probation</li> </ul>
Geographic relocation	<ul style="list-style-type: none"> <li>▪ (Would the defendant be more successful living outside the state?)</li> <li>▪ Letter from family member with whom the defendant will reside outside the state</li> </ul>
Community Service	<ul style="list-style-type: none"> <li>▪ (Could the defendant perform additional community service in lieu of restitution?)</li> <li>▪ (Is the defendant physically able to perform community service?)</li> <li>▪ Medical records or statement from doctor</li> <li>▪ Related to the characteristic of the offense and the skills of the client. Community service should “fit the crime” as much as possible.</li> </ul>
Defendants’ Contribution to Law Enforcement	<ul style="list-style-type: none"> <li>▪ Can the defendant contribute special knowledge about techniques of illegal conduct (fraud, technologically assisted crimes); manual services such as yard work or cleaning up garages</li> </ul>
Public Information Services	<ul style="list-style-type: none"> <li>▪ Some offenders are well equipped to inform the public about the seriousness or the means of preventing certain offenses, such as drunk driving, check fraud. Activities may include writing newspaper articles, speaking at schools, etc.</li> </ul>
Community advocate for sex offenders	<ul style="list-style-type: none"> <li>▪ The individual, a third party monitor, extends supervision beyond that of probation or parole officers. An offender may have several advocates, each of them with functions related to either the offender’s employment, counseling, or vocational training, etc. Churches or civic organizations may serve this function.</li> </ul>
Relinquishing a Right	<ul style="list-style-type: none"> <li>▪ For example, House Arrest, limits upon use of car or travel, structuring of offender’s time, restrictions on privacy, giving up activities, including use of a computer (especially in sex offense cases), hunting, sports, social drinking, etc.</li> </ul>
Defendant’s Dress for Court	<ul style="list-style-type: none"> <li>▪ Many judges are put-off by what they perceive as disrespectful attire in the courtroom. Keep a long sleeve shirt and tie in your office for defendants who do not have proper clothing or may need to cover tattoos. Instruct the defendant to get a haircut and a shave.</li> </ul>

**§ 15A-1340.16.****21 MITIGATING FACTORS**

Coercion	(1) The defendant committed the offense under duress, coercion, threat, or compulsion that was insufficient to constitute a defense but significantly reduced the defendant's culpability.
Minor role	(2) The defendant was a passive participant or played a minor role in the commission of the offense.
Mental or physical condition	(3) The defendant was suffering from a mental or physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
Age, immaturity, or limited mental capacity	(4) The defendant's age, immaturity, or limited mental capacity at the time of commission of the offense significantly reduced the defendant's culpability for the offense.
Restitution	(5) The defendant has made substantial or full restitution to the victim.
Victim voluntarily participated	(6) The victim was more than 16 years of age and was a voluntary participant in the defendant's conduct or consented to it.
Aided apprehension	(7) The defendant aided in the apprehension of another felon or testified truthfully on behalf of the prosecution in another prosecution of a felony.
Strong provocation	(8) The defendant acted under strong provocation, or the relationship between the defendant and the victim was otherwise extenuating.
Tried to avoid harm	(9) The defendant could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear, or the defendant exercised caution to avoid such consequences.
Believed legal	(10) The defendant reasonably believed that the defendant's conduct was legal.
Voluntarily acknowledged wrongdoing	(11) Prior to arrest or at an early stage of the criminal process, the defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer.
Good reputation	(12) The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
Minor	(13) The defendant is a minor and has reliable supervision available.
Veteran	(14) The defendant has been honorably discharged from the United States armed services.
Accepted Responsibility	(15) The defendant has accepted responsibility for the defendant's criminal conduct.
Completed treatment	(16) The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
Supports family	(17) The defendant supports the defendant's family.
Good community support	(18) The defendant has a support system in the community.
Gainfully employed	(19) The defendant has a positive employment history or is gainfully employed.
Workable plan <b>(Sentencing Services)</b>	(20) The defendant has a good treatment prognosis, and a workable treatment plan is available.
	(21) Any other mitigating factor reasonably related to the purposes of sentences