

SKILFUL Listening - Listening Questionnaire

	Almost always	Usually	Seldom	Never
Do you let people finish what they are saying before you respond?	4	3	2	1
Do you encourage people to finish what they are trying to say if they hesitate?	4	3	2	1
Do you wait until a person has finished telling you their idea before you make judgments?	4	3	2	1
If you do not like the person who is talking can you still listen to them without making judgments?	4	3	2	1
Do you listen carefully regardless of the way a person speaks? (accent, grammar, choice of words)	4	3	2	1
Do you stop what you are doing and give full attention to the task of listening?	4	3	2	1
Do you listen to what people are saying without planning a response?	4	3	2	1
Do you question the person to make sure you understand the problem fully?	4	3	2	1
Do you paraphrase/restate what has been said to make sure you have it right?	4	3	2	1
Do you listen for emotions?	4	3	2	1

Your score...

Total up the columns and check out your results

- **36-40** = Outstanding listener!
- **30-35** = Good listener - *Try and pay attention and suspend judgements*
- **26-29** = Need work - *What could you gain from improving?*
- **0-25** = Need a lot of work - *What could you gain from improving?*

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Active listening: The key of successful communication in hospital managersVahid Kohpeima Jahromi¹, Seyed Saeed Tabatabaee², Zahra Esmaili Abdar³, Mahboobeh Rajabi⁴

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Abstract

Introduction: One of the important causes of medical errors and unintentional harm to patients is ineffective communication. The important part of this skill, in case it has been forgotten, is listening. The objective of this study was to determine whether managers in hospitals listen actively.

Methods: This study was conducted between May and June 2014 among three levels of managers at teaching hospitals in Kerman, Iran. Active Listening skill among hospital managers was measured by self-made Active Listening Skill Scale (ALSS), which consists of the key elements of active listening and has five subscales, i.e., Avoiding Interruption, Maintaining Interest, Postponing Evaluation, Organizing Information, and Showing Interest. The data were analyzed by IBM-SPSS software, version 20, and the Pearson product-moment correlation coefficient, the chi-squared test, and multiple linear regressions.

Results: The mean score of active listening in hospital managers was 2.32 out of 3. The highest score (2.27) was obtained by the first-level managers, and the top managers got the lowest score (2.16). Hospital managers were best in showing interest and worst in avoiding interruptions. The area of employment was a significant predictor of avoiding interruption and the managers' gender was a strong predictor of skill in maintaining interest ($p < 0.05$). The type of management and education can predict postponing evaluation, and the length of employment can predict showing interest ($p < 0.05$).

Conclusion: There is a necessity for the development of strategies to create more awareness among the hospital managers concerning their active listening skills.

Keywords: active listening, communication, hospital managers

1. Introduction

Communication is one of the most important skills in life. This skill is not just speaking and writing; we often forget that one of the most important parts of it is listening. Listening is hard work and requires concentration (1). We do not listen efficiently because of our faulty listening habits. Listening is something more than the physical process of hearing. It is a matter of attitude and also an intellectual and emotional process (2). According to Hunsaker and Alessandra (1), when people are listening, they can be placed in one of four general categories, i.e., non-listener, marginal listener, evaluative listener, and active listener. Each category requires a particular depth of concentration and sensitivity from the listener, and trust and effective communication increase as we advance beyond the first type. Active listening (AL) is the highest and most effective level of listening, and it is a special communication skill. It is also a great strategy for having effective communication (3). It is based on complete attention to what a

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person is saying, listening carefully while showing interest and not interrupting (4). Active listening requires listening for the content, intent, and feeling of the speaker. The active listener shows her or his interest verbally with questions and with non-verbal, visual cues signifying that the other person has something important to say (5). Active listening generally does not occur in hurried communications between two people (3). This skill included verbal and non-verbal items and as being a good active listener different factors should be considered, such as appropriate body movement and posture showing involvement, facial expressions, eye contact, showing interest in the speaker's words, minimum verbal encouragement, attentive silence, reflect back feelings and content, and summarizing intellectually the speaker's words and their purpose (6). Review of different texts and references showed that we can consider three principal factors for AL, i.e., listening attitude, listening skill, and conversation opportunity. According to these factors, we can consider five subscales for active listening, i.e., avoiding interruption, maintaining interest, postponing evaluation, organizing information, and showing interest (7-10). The role of communication skill, especially listening, is very important for managers, because listening is a critical factor in their effectiveness, and creative managers are good listeners. So, many organizations try to improve this skill in their managers (11, 12). Listening requires the managers to understand that their staff and customers are important. Managers listen to their staff's ideas and have the ability to draw out their best advice. It is certain when leaders allocate time to listen actively, they build trust and commitment in their work and this is different from one-way communication and issuing orders to people (13). Supervisors with better listening attitudes and skills enhance their communication with subordinates, which could result in the subordinates' perceiving that they have more support, which causes them to feel better about their work and their supervisor (14). Therefore, it is obvious that, if managers want to be successful, they should listen to their staff and customers and get their feedback (15). In management, AL is an important factor of the client-centered therapy developed by C. R. Rodgers (16). He brought into play AL for improving relationship between managers and workers in the organization. AL can improve interpersonal relationships and perception of confidence and respect, lessen tension, and provide a better environment for joint problem solving and sharing the information in organization (17). In a guideline in Japan, AL was introduced as an important factor for reducing uneasiness and suffering in workers, and it was used for managing workers' stress through improving communication (18). Changing interpersonal relationships positively and reducing stress by AL was reported by the National Institute for Occupational Safety and Health (NIOSH) (19). In healthcare organizations, improving communication among healthcare professional has a major impact on patients' safety since one of the important causes of medical errors and unintentional harm to patients is ineffective communication (20). The value of active listening has been generally known, but it has not been studied in depth, especially in healthcare. Although the root of active listening is in each person's personality, some factors or techniques can facilitate it and make it teachable (5). So, healthcare organizations can train and retrain their different levels of managers, making them more efficient and compassionate leaders, which will lead to a better work environment for the staff, making the organization more successful. Although calls for action issued by Keshtkaran, Makarem, and Motaghd (21-23) emphasized the need for organizations to conduct research in active listening in Iran, the literature shows that the results of such research has not been used productively in active listening, especially by hospital managers (24). Therefore, the aim of this study was to determine whether managers in hospitals listen actively. Moreover, since the listening styles between the top, middle, and first-level managers may vary according to their demographic features, we conducted additional analysis on managers' gender, age, education, marital status, positions, and the length of their employment.

2. Material and Methods

2.1. Study setting and selection criteria

This cross-sectional study was conducted between May and June 2014 in four teaching hospitals affiliated with the Kerman University of Medical Sciences in southeast Iran, including Shahid Beheshti, Afzalipor, Shahid Bahonar, and Shafa Hospitals. They had 220 to 460 active beds and 350 to 1000 personnel. The subjects included all 137 managers, consisting of four top managers, 94 middle managers and medical supervisors, and 39 first-level managers. All managers returned the questionnaire and 133 of them (97%) completed all of the questions. We excluded four managers because they didn't complete the demographic part.

2.2. Data collection and measurement tool

Active Listening skill among hospital managers was measured by self-made Active listening Skill Scale (ALSS) developed based on a literature review (7-10). It consisted of 18 items with a 3-point Likert response option (usually, sometime, and seldom) with the key elements of active listening. It had five subscales, i.e., Avoiding Interruption, Maintaining Interest, Postponing Evaluation, Organizing Information, and Showing Interest.

2.3. Reliability and validity of measurement tool

The validity of the content of the ALSS was explored by 10 organizational behavior and human resources management experts. The internal consistency of the ALSS sub-scales was calculated by Cronbach's alpha coefficient. Spearman's correlation coefficient was calculated to estimate the sub-scales' shared variance. The content validity of the ALSS was good and internal consistency was 0.70.

2.4. Data analysis

The data were analyzed using descriptive and inferential statistics (Pearson product-moment correlation coefficient, chi-squared test, and Multiple Linear Regression) through IBM-SPSS 20, and the significance level was set to 0.05.

2.5. Ethical consideration

Managers were asked to complete the ALSS questionnaires anonymously. This study was approved and supported by the Kerman University of Medical Sciences. Also it received the approval of the Ethics Committee of the University.

3. Results

3.1. Demographic and professional characteristics of managers

Most of managers (70%) were female, 86% were married, and their mean age was 39 ± 7.6 (24-57). Of 133 managers, 93 (70%) worked in clinical units, and 40 (30%) worked in administrative units. Most of them (76%) had a license degree and at least 16 years of experience (Table 1).

Table 1. Demographic and professional characteristics of the managers

Managers Characteristics		n (%)
Gender	Male	40 (30)
	Female	93 (70)
Age (years)	20-30	23 (17)
	31-40	54 (41)
	> 40	56 (42)
Education level	Diploma	13 (10)
	Undergraduate	101 (76)
	Graduate	15 (11)
	GP	4 (3)
Marital status	Married	115 (86)
	Single	18 (14)
Length of Employment (years)	< 10	38 (29)
	1-20	57 (42)
	> 20	38 (29)
Area of Employment	Clinical	93 (70)
	health-administration	40 (30)

3.2. Descriptive analysis of active listening and its subscales

The active listening mean score in hospital managers was 2.32 out of 3 (Min = 1.94, Max = 2.72). Hospital managers were best in showing interest skill (Mean = 2.4, SD = 0.34) of AL, although they were worst in avoiding interruption skill (Mean = 2.05, SD = 0.37). Among the AL subscales, the highest score was obtained by first-level managers (Mean = 2.27, SD = 0.36), and the top managers got the lowest score (Mean = 2.16, SD = 0.31) (Table 2).

Table 2. Comparison of active listening and its subscales between three levels of managers

Level of managers	Total	MI ¹	PE ²	OI ³	SI ⁴	AI ⁵
Top Manager	2.16 ± 0.31	2.2 ± 0.35	2.1 ± 0.19	2.2 ± 0.35	2.2 ± 0.35	2.1 ± 0.33
Middle Manager	2.24 ± 0.33	2.2 ± 0.33	2.2 ± 0.36	2.3 ± 0.32	2.5 ± 0.32	2.03 ± 0.32
First Level Manager	2.27 ± 0.36	2.2 ± 0.32	2.3 ± 0.43	2.4 ± 0.33	2.5 ± 0.34	2.03 ± 0.39

1: Maintaining Interest, 2: Postponing Evaluation, 3: Organizing Information, 4: Showing Interest, 5: Avoiding Interruption; the numbers are presented in Mean ± SD

3.3. Analysis of active listening and demographic characteristics relationships

The area of employment was a significant predictor of avoiding interruption, as health-administrators achieved higher scores than clinical ($\beta = 0.316$, $p = 0.002$). Managers' gender also influenced their maintaining interest skill, with female managers being better at it ($\beta = -0.256$, $p = 0.011$). Type of management ($\beta = -0.167$, $p = 0.04$) and education ($\beta = -0.195$, $p = 0.03$) were significant predictors of postponing evaluation. So, first-level managers rather than top managers and managers with lower levels of education were more skilled at postponing evaluation. Also for showing interest skill, length of employment ($\beta = 0.42$, $p = 0.009$) was a significant predictor, and increases in the time of employment can make managers better at this skill. The other characteristics of the respondents were the same (Table 3).

Table 3. Linear Regression analysis for predicting AL Subscale

AL subscales	Characteristic	b	SEb	β	p
Avoiding Interruption ($R^2 = 0.03$)	Age (years)	0.012	0.080	0.023	0.885
	Length of employment (years)	-0.040	0.077	-0.081	0.608
	Gender (F/M)	0.119	0.079	0.148	0.135
	Marital status (yes/no)	0.085	0.099	0.079	0.389
	Area of employment (health-administration, clinical)	0.254	0.080	0.316	0.002
	Type of management (first, middle, top)	0.022	0.065	0.032	0.731
	Level of education (Diploma, ...)	-0.058	0.059	-0.089	0.329
Maintaining Interest ($R^2 = 0.01$)	Age (years)	-0.030	0.072	-0.068	0.673
	Length of employment (years)	0.013	0.069	0.030	0.850
	Gender (F/M)	-0.182	0.071	-0.256	0.011
	Marital status (yes/no)	0.045	0.088	0.047	0.614
	Area of employment (health-administration, clinical)	-0.014	0.072	-0.020	0.844
	Type of management (first, middle, top)	0.045	0.058	0.074	0.435
	Level of education (Diploma, ...)	-0.054	0.053	-0.094	0.308
Postponing Evaluation ($R^2 = 0.06$)	Age (years)	0.117	0.086	0.212	0.176
	Length of employment (years)	-0.016	0.082	-0.030	0.845
	Gender (F/M)	-0.053	0.085	-0.060	0.532
	Marital status (yes/no)	0.004	0.105	0.004	0.968
	Area of employment (health-administration, clinical)	0.024	0.086	0.028	0.777
	Type of management (first, middle, top)	-0.126	0.069	-0.167	0.042
	Level of education (Diploma, ...)	-0.138	0.063	-0.195	0.031
Organizing Information ($R^2 = -0.005$)	Age (years)	0.017	0.074	0.037	0.820
	Length of employment (years)	0.017	0.071	0.038	0.813
	Sex (F/M)	-0.056	0.073	-0.077	0.441
	Marriage status (yes/no)	0.079	0.091	0.081	0.388
	Area of employment (health-administration, clinical)	-0.041	0.074	-0.056	0.581
	Type of management (first, middle, top)	-0.052	0.060	-0.083	0.386
	Level of education (Diploma, ...)	-0.091	0.054	-0.156	0.094
Showing Interest ($R^2 = 0.017$)	Age (years)	-0.139	0.075	-0.297	0.066
	Length of employment (years)	0.190	0.072	0.421	0.009
	Gender (F/M)	-0.053	0.074	-0.071	0.472
	Marital status (yes/no)	0.034	0.092	0.034	0.716
	Area of employment (health-administration, clinical)	-0.032	0.075	-0.042	0.675
	Type of management (first, middle, top)	-0.054	0.060	-0.085	0.370
	Level of education (Diploma, ...)	0.035	0.055	0.059	0.523

4. Discussion

In our study, the active listening mean score of hospital managers was 2.32 out of 3. Top managers in the hospitals were weaker in AL skill in than the first-level and middle managers, which might contribute to their eventful work and lack of training. Some studies have shown that most people are poor listeners (25). In a study by Atwater (15), more than 85% were average or worse in AL. In addition, listening studies in managers have displayed that their

listening skill and AL skill were not excellent, which was in agreement with our findings (21). The Kubota study in Japan showed that the middle managers' AL score was 18.7 (out of 30), and 52.5% of them attained the medium score (11). In the AL subscales, hospital managers got the best score in showing interest skill and organizing information and the worst in avoiding interruptions. Showing interest is a great skill because managers by showing attention to the staff speaking excite them reveals their hidden ideas or their work related problems. It also helps staff become closer to their managers and perceive them as kind managers. In this study, managers were worst in avoiding interruption skill of AL. People need time to explore their thoughts and feelings, so by being silent, the speaker is allowed to continue speaking or looking for ideas. Silence is also helpful in preventing impairing and unnecessary interaction. Nevertheless, the managers in this study did not pay attention to this issue. The results showed that employment area can predict avoiding interruption, as health-administrator achieved higher score than clinical. This can be related to the health administrators' educational field or special training. Female managers' AL skill was higher than that of male managers, which is congruent with previous studies (26). Managers' gender also can influence their maintaining interest skill, and female managers were more skillful in this area. Types of management and education level were predictors of postponing evaluation skill. So, supervising in the first level of organization and having lower education affected positively the postponing evaluation skill. Length of employment was a significant predictor of showing interest and increases in length of employment can make managers be better in this skill. It may be manager experiences showed them that staff ideas or solutions can be so helpful in organizational problems, and this caused them to be more interested in hearing them and getting their ideas. Even though AL skill in hospital managers is associated with patients exposing their concerns (27) and is the first step towards patient-centered healthcare (28) and providing better work conditions for nurses and other staff members, comparatively few managers have received training regarding effective listening (26). Hunsaker and Alessandra recommended that organizations learn AL skills to conquer their barriers (1). Therefore, it seems that using active listening in managerial communication can be very helpful in creating better work environments. Also, awareness and knowledge of the barriers, as well as the motivation to overcome them, are valuable for managers in organizations. As a limitation, the managers' high workloads and lack of time for completing the questionnaire prolonged this study.

5. Conclusions

The findings showed hospitals first-level and middle managers were better than top managers in AL skill. In AL subscales, hospital managers got the best score in showing interest skill and organizing information and the worst in avoiding interruption skill. Area of employment and managers' gender were the significant predictors of avoiding interruption and maintaining interest skill. Type of management and education can predict postponing evaluation and length of employment can predict showing interest. Active listening does not come naturally to most of us, and, like other communication skills, it must be learned and developed. So, there is a necessity for the development of strategies to create more awareness among hospital managers regarding the AL skill. Moreover, further research also should be focused on the development of interpersonal and communication skills among healthcare managers.

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Conflict of Interest:

There is no conflict of interest to be declared.

Authors' contributions:

All authors contributed to this project and article equally. All authors read and approved the final manuscript.

References:

- 1) Hunsaker PL, Alessandra T, Alessandra AJ. The new art of managing people, updated and revised: Person-to-person skills, guidelines, and techniques every manager needs to guide, Direct, and Motivate the Team. 2008. Simon and Schuster Inc. New York NY, USA.
- 2) Jones JE, Pfeiffe JW. The 1974 Annual Handbook for Group Facilitators, San Diego, CA: Pfeiffer. 1974. In Small Group Instructor Training Course (SGITC). 1998. By U. S. Army.

- 3) Gonzalez TD. Impact of active listening training at a California state hospital: a quantitative study. [PhD thesis]. 2009. University of Phoenix, Arizona, USA.
- 4) Weger HJR, Castle GR, Emmett MC. Active listening in peer interviews: the influence of message paraphrasing on perceptions of listening skill.. *International Journal of Listening*. 2010; 24: 34–49. doi: 10.1080/10904010903466311.
- 5) Bauer C, Kathrin F, Renate MP. Introducing “active listening” to instant messaging and e-mail: benefits and limitations. *IADIS International Journal on WWW/Internet*. 2010; 7(2): 1-17.
- 6) Robertson K. Active listening: more than just paying attention. *Aust Fam Physician*. 2005; 34(12): 1053-5. PMID: 16333490.
- 7) Harvard Manage Mentor-coaching tools. Active Listening Self-Assessment. 2004. Available from: http://www.mheducation.ca/college/mcshane4/student/olc/4obm_sa_08.html.
- 8) Canadian Career Development Foundation. Circuit Coach, Helping Youth Get Ready/Self B.1.2 Active Listening. Available from: <http://www.ccdf.ca/ccdf/NewCoach/english>.
- 9) McShane SL. Canadian organization behavior, chapter 8: Communicating in organizational settings, 2000. McGraw–hill, Ryerson. Toronto.
- 10) Mishima N, Kubota S, Nagata S. The development of a questionnaire to assess the attitude of active listening. *J Occup Health*. 2000; 42(3): 111-8. doi: 10.1539/joh.42.111.
- 11) Kubota S, Mishima N, Nagata S. A study of the effects of active listening on listening attitudes of middle managers. *J Occup Health*. 2004; 46(1): 60-7. doi: 10.1539/joh.46.60, PMID: 14960831.
- 12) Keyser J. Active listening leads to business success. *ATD*. 2013; 67(7): 26-8.
- 13) Cohen S, Eimicke WB. The new effective public manager: Achieving success in a changing government. 1995. Jossey-Bass. San Francisco. USA.
- 14) Minema S, Tsutsumi A, Takao S, Nishiuchi K, Kavakami N. Supervisors’ attitude and skills for active listening with regard to working conditions and psychological stress reactions among subordinate workers. *J Occup Health*. 2007; 49(2): 81-7. PMID: 17429164.
- 15) Atwater E. I Hear you: A listening skills handbook. 1992. Walker & Co; Rev Sub edition. New York. USA.
- 16) Rogers CR. Client-centered therapy: Its current practice, implications and theory. 1951. Constable. London.
- 17) Salem R. Empathic listening. Beyond intractability. Eds. Guy Burgess and Heidi Burgess. Conflict information consortium. 2003. University of Colorado, Boulder, Colorado, USA.
- 18) The text book for mental health promotion to workers - guideline and its explanation-Tokyo: JISHA (2001). Japan Industrial Safety and Health Association: 31-5.
- 19) National Institute for Occupational Safety and Health. Available from: <http://www.medscape.com/partners/niosh/public/niosh>.
- 20) Leonard M, Graham S, Bonacum D. The human factor: the critical importance of effective teamwork and communication in providing safe care. *Qual Saf Health Care*. 2004; 13(Suppl 1): i85–i90. doi: 10.1136/qshc.2004.010033, PMCID: PMC1765783.
- 21) Keshtkaran A, Heidari A, Bastani P. Study of managers’ communication skills based on the staff’s view in shiraz university of medical sciences. *payavard*. 2012; 5(4): 41-8.
- 22) Makarem A, Movaffaghi Z, Hosseini F, Beyraghi N, Nabavi F, Khajedaluae M. Clinical Medical Teachers’ Competency of Active Listening in Mashhad University of Medical Sciences. *Iranian Journal of Medical Education*.. 2013, 12(12): 935-46
- 23) Motaghed Larijani Z, Vakili M, Gofranipour F, Mirmohammadkhani M. Effects of health education program on Behvarz's interpersonal communication skills in Semnan University of Medical Sciences. *koomes*. 2015; 16(2): 229-38.
- 24) Baghiyani Moghadam M, Momayyezi M, Rahimdel T. Communication Skills of department heads in shahidsadoughi university of medical sciences. *Iranian Journal of Medical Education*. 2012; 12(6): 448-57.
- 25) Axley SR. Communication at work: Management and the communication-intensive organization. 1996. Westport, Conn: Quorum Books, USA.
- 26) Khanifar H, Jandaghi G, Shariati F, Zarvandi N. Reviewing the communicative role of effective listening and commitment. *Journal of Human Resource Management Research*. 2009; 1(3): 147-70.
- 27) Wissow LS, Wilson ME, Roter DL. Pediatrician interview style and mothers' disclosure of psychosocial issues. *Pediatrics*. 1994; 93(2): 289-95. PMID: 8121743.
- 28) Fassaert T, van Dulmen S, Schellevis F, Bensing J. Active listening in medical consultations: development of the active listening observation scale (ALOS-global). *Patient Educ Couns*. 2007; 68(3): 258-64. PMID: 17689042.

Active Listening

Communication Skill



Active Listening: Treating listening as an active process, rather than a passive one. This means participating in conversation, rather than acting as an audience. Active listeners show they are listening, encourage sharing, and strive to understand the speaker.

Show You're Listening

Put away distractions. Watching TV, using your phone, or doing other things while listening sends the message that the speaker's words are not important. Putting away distractions allows you to focus on the conversation and help the speaker feel heard.

Use verbal and nonverbal communication. Body language and short verbal cues that match the speaker's affect (e.g. responding excitedly if the speaker is excited) show interest and empathy.

Verbal:	<i>"mm-hmm" / "uh-huh"</i>	<i>"that's interesting"</i>	<i>"that makes sense"</i>	<i>"I understand"</i>
Nonverbal:	<i>nodding in agreement</i>	<i>reacting to emotional content (e.g. smiling)</i>	<i>eye contact</i>	

Encourage Sharing

Ask open-ended questions. These are questions that encourage elaboration, rather than "yes" or "no" responses. Open-ended questions tell the speaker you are listening, and you want to learn more.

<i>"What is it like to ____?"</i>	<i>"How did you feel when ____?"</i>	<i>"Can you tell me more about ____?"</i>
<i>"How do you ____?"</i>	<i>"What do you like about ____?"</i>	<i>"What are your thoughts about ____?"</i>

Use reflections. In your own words, summarize the speaker's most important points. Be sure to include emotional content, even if it was only communicated through tone or body language.

Speaker: *I've been having a hard time at work. There's way too much to do and I can't keep up. My boss is frustrated that everything isn't done, but I can't help it.*

Listener: *It sounds like you're doing your best to keep up, but there's too much work. That sounds stressful!*

Strive to Understand

Be present. Listening means paying attention to body language, tone, and verbal content. Focus your attention on listening, instead of other mental distractions, such as what you want to say next. When possible, save sensitive conversations for a quiet time with few distractions.

Listen with an open mind. Your job is to understand the speaker's point of view, even if you don't agree. Avoid forming opinions and making judgments until you fully understand their perspective.

Active Listening

Active Listening means being deeply engaged in and attentive to what the speaker is saying. It requires far more listening than talking. Your goal as an active listener is to truly understand the speaker's perspective (regardless of whether you agree) and to communicate that understanding back to the speaker so that he or she can confirm the accuracy of your understanding.

What It's Called	How To Do It	Why Do It	Examples of Active Listening Responses
Paraphrasing	Restate the same information, using different words to more concisely reflect what the speaker said.	Tests your understanding of what is heard by communicating your understanding of what the speaker said. Allows the speaker to 'hear' and focus on his or her own thoughts. Allows the speaker to see that you are trying to understand his/her message and perceptions. Encourages the speaker to continue speaking.	What I'm hearing is..." "Sounds like you are saying..." "I'm not sure I'm with you but... If I'm hearing you correctly.... So, as you see it... It sounds like what's most important to you is . . .
Clarifying	Invite the speaker to explain some aspect of what she or he said.	Gives the speaker the opportunity to elaborate and clarify what was said. Gives you the opportunity to identify anything that is unclear and to check the accuracy of your understanding	I am not sure I quite understand; or do you mean that...? Can you say more about . . . ? You have given me a lot of information, let me see if I've got it all..."
Reflecting	Relaying what was said back to the speaker to show that you understand how eh/she feels about something.	Deepens understanding of feelings and content. Allows the speaker to see that you are trying to understand his/her message and perceptions.	"I get the sense that you might be feeling afraid about what might happen if . . . " To me, it sounds like you are frustrated about what was said, but I am wondering if you are also feeling a little hurt by it." It seems like you felt confused and worried when that happened." "So, you're saying that you were feeling more frightened than angry."
Summarizing	Identify, connect, and integrate key ideas and feelings in what the speaker said.	Helps both listener and speaker identify what is most important to the speaker.	Let me summarize what I heard so far. ... So, on one the hand... but on the other hand . . . I think I've heard several things that seem to be important to you, first____, second, second____, third____." "It sounds like there are two things really matter most to you . . . "

Examples of Roadblocks to Good Listening

Fixing	Evaluating	Diverting	Interrupting
Ordering Suggesting Advising Diagnosing	Judging Threatening Praising Condemning Taking sides Giving opinions	Reassuring Changing the subject Focusing on your own agenda Minimizing	Interjecting comments Not allowing speaker's own pace Tuning out Creating/responding to distractions Cross-examining

Tips for Active Listening

Do's	Don'ts
Listen More than you talk Let the speaker finish before you respond. Asks open-ended questions Remain attentive to what's being said Be aware of your own biases Manage your own emotions Be attentive to ideas and problem-solving opportunities Give verbal and nonverbal messages that you are listening Listen for both feelings and content	Dominate the conversation Interrupt Finish the speaker's sentences Jump to conclusions Respond with blaming or accusatory language Become argumentative Demonstrate impatience or multitask Mentally compose your responses about what to say next Listen with biases or shut out new ideas

A Cheat-Sheet for "Feeling" Words

Concerned Desperate Confused Angry Frustrated Discouraged Annoyed Belittled Patronized Put-Down Understood Turned off Pleased Uncomfortable Resentful Misunderstood On the spot	Unimportant Resentful Misunderstood On the spot Unimportant Hopeless Encouraged Confident Envious Dissatisfied Worried Affectionate Resigned Tired Enthusiastic Puzzled Threatened	Stymied Hurt Astonished Overwhelmed Surprised Scared Terrified Upset Uncertain Important Guilty Blamed Content Shamed Defensive Discounted Embarrassed	Attacked Considered Intruded upon Intimidated Ignored Comforted Sad Anxious Disturbed Rejected In a bind Delighted Infuriated Ripped-off Betrayed Concerned Joyful
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Law and Order:

The Timing of Mitigating Evidence Affects Punishment Decisions

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Abstract

When we hear about a transgression, we may consider whether the perpetrator's individual circumstances make their transgression more understandable or excusable. Mitigating circumstances may reduce the severity of punishment that is deemed appropriate, both intuitively and legally. But importantly, in courts of public opinion and of law, mitigating information is typically presented only after information about a perpetrator's transgression. We explore whether this sequence influences the force of mitigating evidence. Specifically, in two studies, we examined whether presenting evidence about a perpetrator's background before or after evidence of their violation influenced how severely U.S. participants punished perpetrators. In Study 1 ($N=132$), evidence about the perpetrator's mitigating circumstances reduced punishment only when it was presented before evidence about the perpetrator's violation. Study 2 ($N=316$) additionally revealed this moderating effect of presentation order across a variety of premeditated and impulsive violations. These findings are consistent with person-centered theories of punishment and with the Story Model of adjudication.

Keywords: transgressions; punishment decisions; extenuating circumstances; order effects

Law and Order:

The Timing of Mitigating Evidence Affects Punishment Decisions

Imagine that you are a school official deciding how to punish a student for stealing money and food from a classmate. As you weigh potential punishments, you learn that the student was raised in poverty and had endured abuse from their parents. Will knowledge of the student's circumstances affect how you punish them? Many studies have investigated variants of this question (e.g., Barnett et al., 2004; Robinson, Jackowitz, & Bartels, 2012; Bell et al., 2016; Meixner, 2022). The studies reported herein addresses a related, unexplored question: Would your punishment decision be different if you knew of the student's extenuating circumstances *before* you learned about their stealing?

The timing of evidence may play an important role in our everyday moral reasoning and decision-making. For instance, we judge friends and loved ones differently than acquaintances or strangers who commit the *same* violations (Forbes & Stellar, 2022). This is perhaps because, *prior* to learning about their violations, we possess more (generally positive) background knowledge about our friends and loved ones. Thus, what we know about others' prior experiences may soften the perceived magnitude of their violations or may partially excuse their violations. The current studies directly examine how the presentation of information about perpetrators' mitigating circumstances (before vs. after one learns about their violations) influences the punishment assigned to perpetrators. In what follows, we review work on associations between mitigating evidence and punishment decisions. We explain why the timing of evidence might matter, integrating a person-centered perspective on punishment (Landy & Uhlmann, 2018; Uhlmann, Pizarro, & Diermeier, 2015) with the Story Model of adjudication (Pennington & Hastie, 1991). This integrated perspective motivates the key hypothesis that we

test in the current studies, that the effect of mitigating circumstances on punishment decisions will depend on *when* evidence of mitigating circumstances is presented.

Punishment Decisions

Research on moral decision-making has identified many factors that can influence punishment decisions. Researchers have traditionally focused on factors that are temporally and causally related to the punishable act, particularly the *nature* of the act (e.g., firing a gun versus throwing a tennis ball), the *outcome* of the act (i.e., the harm caused), and the perpetrator's *mental states* (e.g., intent) during the act (Alicke, 1992; Cushman, 2008, 2015; Cushman et al., 2013; Young & Tsoi, 2013). These factors may influence punishment decisions in several ways. For example, punishment decisions might differ if a perpetrator's mental functioning is disrupted at the time of the offending act (e.g., due to an untreated brain tumor) or if they encounter circumstances that inspire uncontrollable passions (e.g., finding a partner with another lover) (Cushman, 2015). In these cases, participants tend to assign less punishment to perpetrators, who are viewed as not fully in control of their harmful behavior (e.g., Darley, Carlsmith, & Robinson, 2000; Robinson & Darley, 1995).

Other work demonstrates that punishment decisions may be informed by broad assessments of perpetrators' moral qualities. This "person-centered" account of moral decision-making stresses that humans are motivated to quickly (and often, spontaneously) draw broad inferences about a perpetrator's moral characteristics (Landy & Uhlmann, 2018; Uhlmann et al., 2015; Winter & Uleman, 1984; Hamlin, Wynn, & Bloom, 2007). These broad evaluations can then affect decision-makers' inferences about a perpetrator's causal responsibility for harms (Alicke, 1992) and their intent (Nadler, 2012; Nadler & McDonnell, 2011), as well as decision-

makers' evaluation of how much punishment a perpetrator deserves (for review, see Uhlmann et al., 2015).

Person-centered notions of “just desert” are central to judgments about justice and punishment (e.g., Darley, Carlsmith, & Robinson, 2000; Darley 2009; Heuer, 2005; Heuer, Blumenthal, Douglas, & Weinblatt, 1999). Drolet, Hafer, and Heuer (2016) found that participants were more tolerant of an interrogation target being tortured if the target's past behavior (unrelated to the current interrogation) was more reprehensible (e.g., killing children) versus less reprehensible (e.g., injuring soldiers) (see also Carlsmith & Sood, 2009). The association between the target's past behavior and participants' tolerance of the target's torture was mediated by participants' belief that the target deserved harsh treatment. With respect to punishment, Nadler (2012) found that participants assigned greater punishment to a reckless skier who injured another person when the skier was described as having poor character (e.g., often late to work, loafs around town, rarely helps his family) versus when the skier was described as having good character (e.g., a model employee, volunteers at an animal shelter, regularly helps his family). Conversely, evidence that a perpetrator endured a difficult past may soften the punishment assigned to them for their offenses (e.g., Barnett et al., 2004; Robinson et al., 2012; Bell Holleran et al., 2016; Meixner, 2022; but see Appelbaum & Scurich, 2014; Berryessa, 2016; Lynch et al., 2019). In sum, what decision-makers know about a perpetrator's background can sway their punishment decisions.

The Role of Timing

In the current studies, we explore the possibility that the effect of mitigating evidence on punishment decisions varies based on the *order* in which decision-makers are presented evidence

about the perpetrator's violation and the perpetrator's mitigating circumstances. There are at least two theoretical motivations to expect this order effect.

The first motivation is the person-centered perspective on punishment. As noted above, a person-centered perspective implies that evidence about a perpetrator's background circumstances influence how others punish them. It also implies that the *timing* of such background evidence should matter, because evidence of a perpetrator's illicit acts function as a source of information about their global moral character. The extent to which the information is interpreted as diagnostic of moral character depends on context (for review, see Uhlmann et al., 2015). When the only information available about a perpetrator concerns their violative act, we may be prone to draw initially negative global inferences about their character. Thus, the timing of mitigating evidence should matter: learning about a perpetrator's background circumstances *before* learning about their illicit act should add nuance to inferences about the perpetrator's character *before* negative global inferences can be drawn from their violation alone.

A second motivation for the prediction that the effects of mitigating evidence will vary based on its timing follows from theories of adjudication prominent in the literature on legal decision making. We use the term adjudication to mean "the formal process by which litigants offer evidence to a decisionmaker (typically a juror) charged with finding facts and applying rules that specify the significance of such facts" (Kahan, 2015, p. 56). Much research at the intersection of psychology and law has used adjudication as a context to explore how decisionmakers use facts to draw inferences and make evidence-based decisions. A general theme that has emerged from this research is that decisionmakers do not process evidence like classical Bayesians; that is, they do not weigh pieces of evidence independently and update their assessment of a case in an algebraic manner. Rather, they tend to *integrate* evidence with

existing knowledge to construct and test narratives about what happened in a given case (Bilz, 2010; Feigenson, 1995; Holyoak & Simon, 1999; Kahan, 2015; Pennington & Hastie, 1986, 1990, 1992).

Perhaps the most-studied narrative framework is Pennington and Hastie's "Story Model." The Story Model posits that legal decisionmakers use the evidence presented during adjudication, together with their existing knowledge about the world and about story structure, to construct and compare possible narratives of what happened in a case. Decisionmakers come to cases equipped with *stock stories* (e.g., 'bullied student snaps'; 'wife poisons unfaithful husband') that function as templates for organizing, interpreting, and filling gaps in the evidence presented to them (Pennington & Hastie, 1986). This narrative-construction process is ongoing throughout adjudication, as decisionmakers attempt to integrate evidence into coherent stories (Feigenson, 1995; Kahan, 2015). Ultimately, decisionmakers choose what they consider to be the most complete, coherent story and render their legal decision based on that story. The Story Model predicts that the order in which evidence is presented will likely affect legal decisions. In particular, evidence that decisionmakers encounter *earlier* will have *outsized* influence as it shapes the decisionmakers' *initial* selection of story templates (Kahan, 2015; Pennington & Hastie, 1988, 1991, 1992). Whether a decisionmaker learns about the defendant's crime vs. the defendant's difficult life circumstances *first* might cause them to select very different story templates, leading to different conclusions.

Thus, the person-centered perspective of moral decision-making and the Story Model of adjudication both inspire the prediction that the effect of mitigating evidence on decisionmakers' subsequent punishment judgments will depend on its timing (relative to when evidence of an actor's violation is presented). The current studies test this general hypothesis. To our

knowledge, no studies that have examined punishment decisions have manipulated *when* evidence of mitigating circumstances is introduced.

Current Studies

In two studies, we tested whether providing information about perpetrators' background circumstances *before or after* information about the perpetrators' violations would moderate the effect of background circumstances on punishment decisions. Study 1 was an initial exploration of this question: participants were asked to assign punishment to perpetrators who had either *negative* or *neutral* backgrounds, and perpetrators' background information was presented either before or after information about their violation. Participants read a series of vignettes, each consisting of two components: a description of the violation (e.g., stealing or injuring someone) and a description of the perpetrator's background circumstances. In some vignettes, the perpetrator's background circumstances were *negative* (e.g., growing up in poverty, or being socially excluded). In other vignettes, the perpetrator's background circumstances were comparatively *neutral* (e.g., growing up middle-class, or making new friends). We use the term "negative" not to reflect our own evaluations of these conditions, but as shorthand to refer to positions that are comparatively less privileged, less supportive, or that people often wish to avoid. Key words included in the "negative" scenarios (e.g., "mean"; "poverty"; "injury") are typically interpreted as negatively-valenced (see Warriner, Kuperman, & Brysbaert, 2013). We use the term "neutral" to refer to expected outcomes (e.g., completing a project as anticipated), normative conditions for the perpetrator (e.g., growing up middle-class) or conditions only tangentially related to the perpetrator (e.g., reading coworker's derogatory comments about celebrities). For each study, we included a variety of background circumstances and a variety of transgressions to evaluate the robustness of these effects.

We hypothesized that participants evaluating perpetrators with mitigating/negative circumstances would assign less severe punishment than participants evaluating perpetrators with *neutral* circumstances; however, *only* when the mitigating/negative circumstances were presented *before* information about the perpetrators' transgressions. Inspired by previous work, for exploratory purposes, we also evaluated other factors that might influence punishment decisions directly or by mediating the effects of background, including participants' inferences about perpetrators' character and agency, and participants' sympathy and empathy toward the perpetrators (see Alicke, 1992; Nadler, 2012; Uhlmann, et al., 2015). Study 1 revealed the anticipated order effect: the order in which participants learned of perpetrators' background circumstances (mitigating or neutral) moderated the relation between perpetrators' background circumstances and participants' punishment decisions. Study 2 was designed to test the replicability of this effect and to test its boundary conditions, evaluating whether it manifests for impulsive transgressions, premeditated transgressions, or both. As in Study 1, perpetrators' violations were described either before or after descriptions of their backgrounds. Study 2 included an additional (positive) background condition, to help further specify the influence of perpetrators' background circumstances on punishment decisions.

All study methods, materials, and consent documents were approved by Vanderbilt University's Institutional Review Board ("Accounting for Extenuating Circumstances in Moral Judgements", IRB# 170239).

Study 1

Method

Participants

Participants ($N = 132$) were recruited using Amazon's Mechanical Turk. An additional

five participants were excluded for failing to correctly answer at least five of the six reading-comprehension questions about the violation scenarios (probability of randomly answering 5-6 of the 6 questions correctly, $p = .005$). The target sample size was informed by an a priori power analysis using G*Power 3.1 (Faul, Erdfelder, Lang, & Buchner, 2007), which assessed the number of participants needed to detect medium effect sizes (e.g., $f_s \geq .25$) with statistical power at the recommended .80 level and $\alpha = .05$ (Cohen, 1992). This analysis identified a minimum recruitment goal of 116 participants.

The survey was open online to all Mechanical Turk (MTurk) workers in the United States who were at least 18 years in age and spoke English. Data collected through Mturk have generally been found to be at least as reliable as data obtained through traditional recruitment methods, and to represent a significantly more diverse group of participants than conventional samples of college students (Behrend et al., 2011; Buhrmester, Kwang, & Gosling, 2011; Kees, Berry, Burton, & Sheehan, 2017). TurkPrime.com was used to administer the survey, and several methods were employed to ensure that each participant was unique (e.g., allowing only one participant per IP address; to maintain anonymity, participants' IP addresses were not stored in data files). To ensure that participants were legitimate, we required that at least 95% of each participant's prior Mturk 'work' had been approved, employed comprehension-check questions, CAPTCHA, and a survey completion confirmation code. Participants were compensated \$1 for completing the survey on Qualtrics.com (average duration was 13 minutes, including the consenting phase). After completing the informed consent, participants were asked to report their age ($M_{age} = 31.67$ years, $SD_{age} = 9.40$ years, range = 19-66 years), gender identification (77 male, 54 female, 1 "preferred not to say"), and zip code (participants could opt to skip any of these questions).

After completing the focal portion of the survey (i.e., after reading and answering questions about six transgression scenarios, described later), all participants completed an additional voluntary demographic questionnaire, which we used to further characterize our sample. Most participants (98%) reported that their first language was English. The majority (65%) identified as exclusively White/Caucasian, 14% identified as exclusively Black/African-American, 10% exclusively Asian/Asian-American, 7% identified as Hispanic/Latino White, 4 participants identified with multiple ethnicities (Asian/White, Black/White, Other/White), and 3 participants identified as Other (one of whom also identified as Hispanic/Latino). Three participants did not report whether they identified as Hispanic/Latino. In terms of education, 40% of participants reported having earned a bachelor's degree, 38% had completed some college, 12% earned a high school diploma, 7% earned a master's degree, 2% earned a doctorate, and 1% reported completing some high school. Additional demographic data (religious identity, religious participation, and political identity) are presented in Supplementary Materials.

Stimuli

Each participant read six vignettes about different moral violations. Each vignette consisted of two passages, one with information about the violation and one with information about the perpetrator's background circumstances. Our goal in creating these vignettes was to eventually study the influence of extenuating circumstances on both adults' and children's judgments of perpetrators. Thus, all backgrounds and violations were designed to be appropriate for research with participants under the age of eighteen, and we did not include some of the more extreme background circumstances (e.g., child abuse) or violations (e.g., murder) that have been used in past work with adults (for examples, see Appelbaum & Scurich, 2014; Barnett, Brodsky & Davis, 2004; Robbins & Litton, 2018). The violation and background passages were written so

that they could be mixed and matched randomly—i.e., any violation passage could be paired with any background passage, in any order, to create a coherent vignette. Randomization features from Qualtrics.com were used to randomize background-violation pairings for each participant.

Violations. The violation passage of each vignette described a character committing one violation that resulted in a clear, negative outcome. The six violations included: disturbing the peace, destruction of property, selling secrets, theft, online bullying, and battery (the perpetrator tripped a coffee shop patron with their leg). Each violation was loosely based on real events described in online news articles. For the full text of each violation, visit:

https://osf.io/gf5rb/?view_only=5439416be8dc4ec88e3354409882d1c3.

We created two versions of each of the six violation passages: a more *impulsive* version and a more *premeditated* version. The two versions differed in the extent to which, and duration over which, the perpetrator planned the violation. For example, in one passage, the perpetrator uses their leg to trip and injure a stranger who repeatedly cuts in line at the perpetrator's local café. In the premeditated version, the perpetrator decided they “would do something about it the next time it happened” days before ultimately tripping the stranger with their leg. Whereas, in the impulsive version, the perpetrator “feels a surge of anger and suddenly sticks out their leg and trips the stranger.” Using these violations in a pilot study, we found that participants did indeed attribute more *intent* to perpetrators who committed premeditated violations than to those who committed impulsive violations (see Supplementary Materials for a brief description of this pilot study and average intent scores by violation type). Violation type (premeditated vs. impulsive) was manipulated within-subjects, such that each participant read about three *premeditated* violations and three different *impulsive* violations.

Backgrounds. The personal *background* of each perpetrator was manipulated between-subjects (negative circumstance or neutral circumstance), and participants were randomly assigned using Qualtrics.com's randomization features. Approximately half of the participants ($n = 64$) read about perpetrators with *negative* background circumstances and the other half ($n = 68$) read about perpetrators with *neutral* background circumstances. The six *negative* backgrounds described the perpetrator as either growing up in poverty, being cyberbullied, being socially excluded, exerting effort with no payoff, having a genetic disorder, or having a traumatic brain injury. The six *neutral* backgrounds matched the negative backgrounds in length and general topic and either described the perpetrator as growing up middle class, visiting websites about celebrities, making friends in a new city, having effort pay off as expected, applying for health insurance, or receiving a blood test. The full versions of all 12 backgrounds can be found here: https://osf.io/gf5rb/?view_only=5439416be8dc4ec88e3354409882d1c3.

Procedure

Participants read a general description of how the survey would proceed—they would read six vignettes and answer five questions following each vignette. Participants were urged to read each vignette carefully, to “answer each question based on how you would react to the situation if it were to happen in real life,” and to, “consider each scenario independently.” The perpetrator in each vignette had a different name and the names were gender-matched to each participant. The one participant who did not indicate their gender read about characters with male names. The procedure for each vignette was as follows:

Each vignette was initially presented in two parts, the violation passage and the background passage, displayed separately on successive web pages. The presentation order (violation-first or background-first) was randomly assigned between subjects. Participants

evaluated perpetrators' *character*, assigned *punishment* to perpetrators, reported their *sympathy* and *empathy* toward perpetrators, and provided their estimates of perpetrators' *control*.

Participants evaluated the perpetrator's *character* twice—once after the violation passage and once after the background passage—using a 7-point Likert scale (from 1 = “very bad” to 7 = “very good”). Next, the entire vignette (i.e., both the violation passage and the background passage) appeared on the same page (arranged in the same order as previously presented) along with a prompt asking participants to rate how severely that perpetrator should be *punished* for the specific violation (from 1 “not at all punished” to 7 “severely punished”). For exploratory purposes, participants were asked how much *control* they believed the perpetrator had over the situation (from 1 = “no control” to 7 = “complete control”), how much the participant could “relate to” the perpetrator (from 1 = “not at all” to 7 = “very much”; a measure of *empathy*), and how “sorry” they felt for the perpetrator (from 1 = “not at all” to 7 = “very much”; a measure of *sympathy*). After answering all of these questions, participants were shown a new web page with a multiple-choice question to assess whether the participant read and comprehended the vignette (see Supplementary Materials for example multiple-choice comprehension questions). This procedure was repeated for each of the six vignettes. After reading and responding to all vignettes, participants were asked to voluntarily provide demographic information.

Results

Punishment Decisions

The primary purpose of Study 1 was to investigate the relation between perpetrators' backgrounds (negative circumstances vs. neutral circumstances) and the severity of punishment assigned to perpetrators, based on the order in which background information was presented. We examined participants' punishment decisions using a mixed-effects ANOVA that included

Background type (negative circumstances vs. neutral circumstances) and Presentation order (background before violation vs. after violation) as between-subjects factors, and Violation type (premeditated vs. impulsive) as a within-subjects factor. This analysis revealed a significant interaction of Background type and Presentation order ($F(1,128) = 7.72, p = .006, \eta_p^2 = .06$), depicted in Figure 1. Post hoc tests (Bonferroni adjusted $\alpha = .025$) revealed that participants who were presented with background information *before* violation information judged perpetrators as deserving less punishment if the perpetrators had experienced *negative* circumstances than if they had experienced *neutral* circumstances ($p = .016$). However, participants who were presented with background information *after* violation information assigned similar punishment to perpetrators who experienced *negative* circumstances and perpetrators who experienced *neutral* circumstances ($p = .138$). There were no other significant effects (see Table S1 in Supplementary Materials for the complete ANOVA results). Analyses involving participants' evaluations of perpetrators' character, sympathy and empathy toward perpetrators, and inferences of perpetrators' control are included in Supplementary Materials.

Discussion

In Study 1, we found evidence of the predicted order effect. Participants presented with information regarding perpetrators' negative circumstances punished perpetrators less severely *only* if information about perpetrators' circumstances was presented *before* information about their violations. When information about perpetrators' circumstances was presented *after* information about their violations, it did *not* influence participants' punishment decisions. In other words, participants' punishment decisions *were* mitigated when they had information about perpetrators' extenuating circumstances *before* learning about their violations. Punishment

decisions were *not* mitigated if the information about perpetrators' extenuating circumstances were introduced later.

We interpret Study 1 findings as evidence that information about negative circumstances *reduces* how severely decision-makers choose to punish perpetrators, *if* such evidence is presented first. This finding inspires an additional question—are *positive* circumstances an exacerbating force, that would yield the opposite order effect? Perhaps greater punishment would be administered to perpetrators whose positive circumstances are described before vs. after their violations. To explore this possibility, we created an additional *positive* version of each background passage for Study 2. For example, for background passages about a perpetrator's economic circumstances, participants could be presented with a passage that described *negative* circumstances (e.g., grew up in poverty), *neutral* circumstances (e.g., grew up middle class), or nominally *positive* circumstances (e.g., grew up wealthy). As noted earlier, labels such as “positive” and “negative” do not reflect our own evaluations of these circumstances but reflect normative evaluations of the circumstances—e.g., words used in the “negative” scenarios (e.g., “mean”; “poverty”; “injury”) tend to be interpreted as negatively-valenced; whereas key words used in the “positive” scenarios (e.g., “like”; “wealthy”; “excellent”) tend to be interpreted as positively-valenced (see Warriner et al., 2013).

The Role of Violation Type

In Study 1 we included both premeditated and impulsive moral violations (manipulated within subjects). This allowed us to test whether order effects existed across a wide set of scenarios. In Study 2, we were interested in evaluating the replicability of the order effect identified in Study 1 and testing the boundary conditions for that effect. To eliminate the possibility of carry-over effects between the conditions, separate samples of participants were

recruited for Study 2—one group made punishment decisions about *premeditated* violations and the other group made decisions about *impulsive* violations.

Initially, two separate studies were conceptualized and conducted, differing only in whether participants reasoned about impulsive violations (pre-registered: <http://aspredicted.org/blind.php?x=8md3uk>) or premeditated violations (pre-registered: <http://aspredicted.org/blind.php?x=rw2zt7>). Each study had a target sample of 158 participants, informed by *a priori* power analyses using G*Power 3.1 (Faul et al., 2007) to detect medium-sized effects (e.g., $f_s \geq .25$) with power $\geq .80$ and $\alpha = .05$. Participants in one study could not participate in the other. Results for the individual pre-registered studies are presented in Supplementary Materials. For the sake of parsimony and to increase our statistical power, we combined the two datasets so that we may additionally test for main effects and interaction effects involving the type of violation (premeditated vs. impulsive, treated as a between-subjects variable). As the two samples were recruited at different points in time, conceivably they might differ demographically. However, the two samples were equivalent in age ($t(314) = -.82, p = .42$), education ($t(313) = -.65, p = .51$), distribution of males and females (Mann-Whitney $U = 11358.5, Z = -1.08, p = .28$), and proportion of participants who identified as Black/African-American (Mann-Whitney $U = 12245, Z = -.62, p = .53$), White/Caucasian (Mann-Whitney $U = 12166, Z = -.62, p = .54$), Asian/Asian-American (Mann-Whitney $U = 12166, Z = -.85, p = .40$), Native American (Mann-Whitney $U = 12245, Z = -1.15, p = .25$) and Hispanic/Latino (Mann-Whitney $U = 12173, Z = -.63, p = .53$).

Study 2

Method

Participants

Participants ($N = 316$), who had not participated in Study 1, were recruited using Mechanical Turk (MTurk). An additional 29 participants were excluded from this sample for failure to correctly answer all 4 of the multiple-choice reading comprehension questions (probability of randomly answering all 4 questions correctly, $p = .004$). Three participants were excluded for stopping and then re-starting the survey.

The survey was open to all MTurk workers in the United States who were at least 18 years old, spoke English, and did not participate in Study 1. TurkPrime.com was used to administer the survey, and we employed the same methods as in Study 1 to ensure that each participant was unique and submitted legitimate data. Each participant was compensated \$1 for completing the survey on Qualtrics.com, which took an average of 9 minutes. After providing informed consent, participants were asked to report their age ($M_{age} = 36.61$, $SD_{age} = 11.58$ years, range = 19-74 years), gender (58% male, 40% female, 1% preferred not to say, and 1 participant responded “other”), and zip code.

All participants completed a voluntary demographic questionnaire. Most participants (98%) reported that their first language was English. Most participants (76%) identified as exclusively White/Caucasian, 7% identified as exclusively Asian/Asian-American, 6% identified as exclusively Black/African-American, 1 participant identified as exclusively Native-American, 2 as exclusively Hispanic/Latino, and an additional 9% of participants identified with multiple ethnic or racial categories (Native-American/White, Black/White, and Hispanic/Latino Native-American/Other/White). Three participants did not report whether they identified as

Hispanic/Latino. With respect to education, 41% of participants reported earning a bachelor's degree, 34% completed some college, 17% had earned a high school diploma, 7% had earned a master's degree, and 1% reported earning a doctorate (one participant did not report their education). Additional demographic data (religious identity, religious participation, and political identity) are presented in Supplementary Materials.

Stimuli

For Study 2, we reduced the total number of vignettes from six to four. We removed two *violation* passages that were conceptually similar to other violation passages (one of two that had involved destruction of property and one of two that had involved theft). We also removed two *backgrounds*—one background of a pair that were conceptually similar (both involved peer victimization) and for which participants in Study 1 had assigned similar punishment ratings, and one background that involved a perpetrator's genetic disorder, based on past research suggesting that genetic evidence might not influence punishment decisions as strongly as other mitigating circumstances (Appelbaum & Scurich, 2014; Berryessa, 2016).

Violations. One goal of this study was to evaluate whether the key interaction of Presentation order and Background type differed for *impulsive* and *premeditated* violations. Using the remaining four violation passages from Study 1, minor edits were made to enhance the spontaneity of each offense for *impulsive* violations, and to further highlight the perpetrator's planning for *premeditated* violations. Additional minor edits were made to the passages to increase their relevance to the participants by including language that implied the violations occurred *recently* (e.g., changing “One day...” to “Last week...”) and by changing the concluding phrases in each violation to present tense (rather than past tense). The Study 2 violation passages can be found here:

https://osf.io/gf5rb/?view_only=5439416be8dc4ec88e3354409882d1c3. Half of the participants ($n = 158$) were assigned to read about *impulsive* violations and the other half ($n = 158$) were assigned to read about *premeditated* violations.

Backgrounds. In Study 2 we addressed the possibility that *positive* circumstances might lead participants to punish perpetrators more severely for transgressing in the absence of difficult life experiences. To test this possibility, we created four *positive* background passages. Participants were randomly assigned to read about perpetrators who had experienced either negative ($n = 106$), neutral ($n = 106$), or positive ($n = 104$) circumstances. All three versions of each background passage focused on similar topics and were of similar length (for these passages, see https://osf.io/gf5rb/?view_only=5439416be8dc4ec88e3354409882d1c3).

Procedure

The procedure was similar to Study 1, but involved several revisions. First, instructions were revised slightly to increase both their ecological validity and relevance to participants. Specifically, participants were instructed at the beginning of the survey that “these scenarios are based on real events and real people” and that they should “respond to each question as if you are making decisions that will affect these people in real life.”

For each of the four vignettes, participants read the first passage (either the violation passage or background passage) on one web page and read the second passage on a subsequent web page. After reading both passages separately, participants were shown both passages on the same screen and asked how severely they would punish the perpetrator for committing the violation (from 1 “not at all punished” to 7 “severely punished”). After reporting their punishment decision, participants answered a multiple-choice question to assess whether they read and comprehended each passage. Given that the primary purpose of Study 2 was to examine

punishment decisions, and given that in Study 1 our additional variables (e.g., character, empathy) did *not* moderate relations between perpetrators' background circumstances and punishment decisions, we did not include these additional measures. Presentation order (violation first or background first), and Background type (negative, neutral, or positive) were manipulated between-subjects.

Results

We evaluated how our focal variables influenced punishment decisions with an ANOVA that included Background type (negative vs. neutral vs. positive), Presentation order (background before vs. after violation), and Violation type (impulsive vs. premeditated). See Table S9 for full ANOVA results. This analysis revealed the hypothesized interaction of Presentation order and Background type ($F(2, 304) = 3.70, p = .026, \eta_p^2 = .024$), depicted in Figure 2. According to post-hoc pairwise comparisons, when participants were presented with the perpetrator's background *before* their violation (but not when they were presented with the violation first), there were significant differences in punishment severity across background types. When presented with the perpetrator's background before their violation, participants assigned the perpetrator *less severe* punishment if they had experienced *negative* backgrounds vs. *positive* backgrounds ($p < .001$) or *neutral* backgrounds ($p = .015$).

An additional way to explore the interaction of Presentation order and Background type is by comparing punishment judgments for the different Presentation orders (violation first vs. background first) when the perpetrators' backgrounds were *negative*, *neutral*, or *positive*. This post-hoc analysis revealed an effect of Presentation order only for *negative* backgrounds—participants administered less severe punishment when the perpetrator's background information was presented *before* their violation information ($p = .01$). No order effects were found when the

perpetrator had a *neutral* ($p = .633$) or *positive* background ($p = .339$). Thus, relative to all other conditions, participants administered the least severe punishment when they read about perpetrators' negative background circumstances before reading about their violations. Importantly, this effect was robust—as depicted in Tables S7 and S8, the effect was evident across all four violations and for three of the four backgrounds.

Although less pertinent to our study aims, the same ANOVA also revealed a significant effect of Violation Type ($F(1, 304) = 5.11, p = .024, \eta_p^2 = .017$), which was moderated by Background Order ($F(1, 304) = 4.33, p = .038, \eta_p^2 = .014$). Participants assigned greater punishment to perpetrators who committed the more premeditated (vs. impulsive) violations. However, this was only the case when violation information was presented before background information (premeditated: $M = 4.91, SE = .12$; impulsive: $M = 4.38, SE = .12; p < .01$), and not when violation information was presented after background information (premeditated: $M = 4.57, SE = .12$; impulsive: $M = 4.55, SE = .12; p = .899$).

General Discussion

The current studies are the first, to our knowledge, to examine whether the time at which information about perpetrators' background circumstances is presented influences how severely decisionmakers punish those perpetrators. In Study 1, participants who read about perpetrators' mitigating background circumstances (e.g., having been raised in poverty), punished perpetrators *less severely* than participants who read about perpetrators' neutral background circumstances (e.g., having been raised middle class) only if information about perpetrators' mitigating circumstances was presented *before* information about their violations. Information about mitigating circumstances did *not* influence punishment decisions if it was presented *after* violation information. In Study 2, we evaluated the replicability of the order effect detected in

Study 1 and tested the boundary conditions of the effect. When presented with background information first, participants' punishment decisions were less harsh for perpetrators with negative backgrounds compared to perpetrators with neutral or positive backgrounds; this was true for impulsive and premeditated violations. As in Study 1, when the perpetrators' background information was presented after information about their violations, the background information had *no effect* on participants' punishment decisions. This interaction effect seems quite robust—it was identified in two studies, and across various types of premeditated and impulsive violations (see Table S7). Although the two samples of participants in Study 2 were not *randomly* assigned to reason about 'premeditated' vs. 'impulsive' violations (a gold standard of experimental research that helps to ensure equivalent samples), post-hoc analyses revealed that the two samples were quite similar demographically.

Our findings are consistent with the person-centered theory of moral decision-making and the Story Model of adjudication. We observed that information about a perpetrator's mitigating circumstances predicted participants' punishment judgments. However, this was true only when mitigating evidence was introduced *before* information about the perpetrator's violation. These findings suggest that an initial intuition that someone deserves a particular punishment, given information about their violation, shapes whether and how much subsequent mitigating evidence about the person's circumstances is weighed. Specifically, one's early-formed intuitions that a perpetrator deserves significant punishment for a violation may reduce one's consideration of later-provided mitigating evidence. Likewise, the Story Model can account for the fact that, in Study 2, violation premeditation influenced punishment decisions only when *violation information* was presented *first*, before information about perpetrators' backgrounds.

Future research might further probe the link between the order effects we have observed and the theories that inspired our predictions. For example, the Story Model suggests that participants organize and remember the evidence presented to them in narrative form and thus information presented earlier has outsized influence. Future research could further test this account by explicitly probing participants' construction of story models and the relations among those models, presentation order, and punishment decisions. For example, after reviewing both background and violation information, participants might respond to open-ended prompts to summarize the evidence as they understand it. This would allow researchers to observe the relative placement and prominence of mitigating circumstances in *participants'* mental narratives of events, and to observe associations with presentation order and punishment decisions.

One theoretical divide that could be probed relates to the distinction between person-centered and act-centered accounts of punishment. Person-centered theories of punishment are grounded in virtue ethics, whereas act-centered theories (such as deontology) focus on moral evaluation of discrete acts without reference to the particular people committing them (Landy & Uhlman, 2018; Uhlmann et al., 2015). Our findings, along with much prior research, support the notion that person-centered factors may powerfully influence punishment judgments (Nadler, 2012; Uhlman et al., 2015). But the *relative* weight of person-centered factors and act-centered factors in punishments could be usefully explored in work that systematically varies the severity of the offense and the salience of mitigating—or exacerbating—circumstances. For example, researchers could present participants with transgressions of varying severity (e.g., murder, armed robbery, shoplifting, trespassing, jaywalking) counterbalanced with background information about the perpetrator's past transgressions of varying severity (e.g., they had previously committed the act of murder, armed robbery, shoplifting, trespassing, or jaywalking,

without prosecution). The relative effect sizes of current crime severity and background information would provide insight into the relative weight afforded act-centered and person-centered information.

One important caveat to note is that the order effects identified in the current studies are found for participants' reasoning about written vignettes; work is needed to test whether these effects generalize to real-world contexts and real court cases. Future work may evaluate how jurors' exposure to public discourse and mass media about particular cases and defendants influences their construction of mental narratives of events and jurors' subsequent punishment judgments. In future work focused on potential legal applications, more ecologically valid stimuli could be devised, including mock transcripts, videos with evidence summaries (e.g., Chao & Santos, 2019), or even full mock trials, with violations more typical of those prosecuted in the criminal legal system. Because the violations presented in the current studies were, by design, relatively mild, one may predict that punishment of more severe violations (e.g., homicide) would be unaffected by presenting mitigating evidence before violation information. Notably, in the current studies perpetrators' negative background circumstances were *also* relatively mild and did not include the more horrific circumstances that some defendants experience (e.g., child abuse). We anticipate that for more severe violations (e.g., homicide) similar order effects might exist when paired with evidence of severe mitigating circumstances (e.g., the perpetrator's history of being abused).

While we stress that more research is needed to bridge our survey findings to the real-world criminal legal system, assume for the moment that future research does ultimately build a sturdy bridge: What might be the implications of similar findings in more ecologically valid contexts? Many have argued that laws should reflect commonplace moral intuitions, and often

they do (e.g., Bilz & Nadler, 2009; Kelman, 2013). The fact that the law explicitly contemplates that courts will consider evidence about a defendant's individual circumstances in criminal sentencing reflects a policy decision that such evidence *should* matter (18 U.S.C. § 3553). Yet the way the legal system actually incorporates such evidence may undercut its effectiveness. When a case goes to trial in the American criminal legal system, typically a jury decides whether the defendant is guilty and (if so) the judge subsequently sets the sentence. Generally, mitigating evidence is introduced only at the sentencing phase, after guilt has been determined. At the sentencing phase, the judge is free to consider broad factors in determining the offender's punishment, including "the nature and circumstances of the offense" and the "history and characteristics of the defendant" (18 U.S.C. § 3553). Thus, lawyers at this phase are far freer to introduce evidence about the defendant's personal characteristics and background than they are during trial (e.g., Meixner, 2022). The consequence is that the judge typically hears the details of the defendant's particular (alleged) violation before learning about the defendant's mitigating individual circumstances during the sentencing phase. An implication of our findings (if reinforced in future work) is that, by the sentencing stage, evidence about the defendant's extenuating circumstances may do little to influence punishment decisions, even though such evidence is allowed because *it should* influence punishment decisions.

It is conceivable that judges, with the benefit of years of training and professional experience, are less prone to the observed order effect than are lay participants. Perhaps judges, can mentally compartmentalize evidence that is relevant only to the defendant's guilt from evidence that is relevant to the court's sentencing decision. However, research conducted with judges indicates that, while their training and experience help to reduce the *magnitude* of some cognitive biases, they remain very much susceptible to typical human cognitive limitations and

tendencies (Guthrie et al., 2000; Rachlinski & Wistrich, 2017). Thus, we would be surprised to observe order effects in mitigating evidence for lay decision-makers but not for judges, at least with respect to vignette-based studies. One could test these hypotheses in future research with samples of judges, although such samples are typically difficult to recruit.

Now, assume that the order effect we have described does manifest in the criminal legal system. If policymakers desire that evidence of mitigating circumstances play a greater role in sentencing, arguably affording more individualized justice, then they could devise new processes to allow the decisionmaker tasked with sentencing a defendant to learn about the defendant's mitigating circumstances *before* learning about the defendant's crime. For example, in a case where a jury decides the defendant's guilt and the judge decides the sentence, it is possible that the judge could hear or review limited information about the defendant's personal circumstances—at least the subset of personal circumstances not immediately related to the criminal act—earlier in the proceedings, before hearing about the defendant's alleged offense in great detail. A caveat is that this might create new risks of bias, with evidence of mitigating circumstances unduly affecting judicial decisions on pre-trial motions, the admissibility of evidence, and so on. But policymakers can balance these risks with the risks of systematically underweighting mitigating evidence that may be inherent to the current approach. One could also imagine a system where criminal cases are more rigidly bifurcated across decision-makers, with the sentence set by a decision-maker or decision-makers who review the relevant information but are not involved in the initial guilt determination. Indeed, at least one federal judge dreamed of a system where “the court's only function would be the determination of innocence or guilt and a board composed of persons trained and experienced in the problems of criminology would determine the nature and duration of corrective treatment” (Levin, 1967, p. 499).

Thus far, we have discussed potential implications for cases in which the criminal defendant elects to go to trial. However, in modern criminal practice, the majority of criminal defendants accept a plea deal rather than go to trial. After pleading guilty, the defendants are then sentenced by the judge, who may not know much about the defendant's offense before the sentencing stage (Meixner, 2022). This suggests an interesting natural experiment. If the weight judges afford mitigating evidence in their punishment decisions depends on what they have previously learned about the defendant's offense, one would expect mitigating evidence about a defendant's personal circumstances to factor more heavily in judges' sentencing decisions in cases involving plea deals (where judges hear less about the details of the offense) than it does in cases where the defendant goes to trial (where judges hear more details about the offense). Future research might analyze courts' sentencing decisions for evidence of such an effect.

In advance of the proposed future work, results of the current studies offer robust evidence that the force of mitigating evidence depends on its timing. Laypersons assigned less severe punishment to perpetrators who experienced negative background circumstances as opposed to neutral or positive circumstances *only* when information about those circumstances was presented *before* information about their transgression. Continued research on this intriguing effect will help to further define its full scope, its boundaries, and its societal implications.

References

- Alicke, M. D. (1992). Culpable causation. *Journal of Personality and Social Psychology: Attitudes and Social Cognition*, 63, 368–378. doi: 10.1037/0022-3514.63.3.368
- Appelbaum, P. S., & Scurich, N. (2014). Impact of behavioral genetic evidence on the adjudication of criminal behavior. *The Journal of the American Academy of Psychiatry and the Law*, 42, 91–100.
- Barnett, M. E., Brodsky, S. L., & Davis, C. M. (2004). When mitigation evidence makes a difference: Effects of psychological mitigating evidence on sentencing decisions in capital trials. *Behavioral Sciences & the Law*, 22, 751-770. doi: 10.1002/bsl.591
- Behrend, T. S., Sharek, D. J., Meade, A. W., & Wiebe, E. N. (2011). The viability of crowdsourcing for survey research. *Behavior Research Methods*, 43, 800. doi: 10.3758/s13428-011-0081-0
- Bell Holleran, L. L., Vaughan, T. J., & Vandiver, D. M. (2016). Juror decision-making in death penalty sentencing when presented with defendant's history of child abuse or neglect. *Behavioral Sciences & the Law*, 34, 742-766. doi: 10.1002/bsl.2271
- Bilz, K. (2010). We don't want to hear it: Psychology, literature and the narrative model of judging. *University of Illinois Law Review*, 429-488.
- Berryessa, C. M. (2016). Genetic essentialist biases, stigma, and lack of mitigating impact on punishment decisions. *Journal of Law and the Biosciences*, 3, 359–364. doi: 10.1093/jlb/lsw023
- Bilz, K., & Nadler, J. (2009). Law, psychology, and morality. In B. H. Ross (Series Ed.), D. M.

- Bartels, C. W. Bauman, L. J. Skitka, & D. L. Medin (Vol. Eds.), *Psychology of learning and motivation: Vol. 50. Moral judgment and decision making* (pp. 101–132). Burlington, MA: Academic Press. doi: 10.1016/S0079-7421(08)00403-9
- Bilz, K. (2010). We don't want to hear it: Psychology, literature and the narrative model of judging. *University of Illinois Law Review*, 429-488.
- Buhrmester, M., Kwang, T., & Gosling, S. D. (2011). Amazon's Mechanical Turk: A new source of inexpensive, yet high-quality, data? *Perspectives on Psychological Science*, 6, 3-5. doi: 10.1037/14805-009
- Carlsmith, K. M., & Sood, A. M. (2009). The fine line between interrogation and retribution. *Journal of Experimental Social Psychology*, 45, 191-196. doi: 10.1016/j.jesp.2008.08.025
- Cohen, J. (1992). A power primer. *Psychological Bulletin*, 112, 155-159. doi: 10.1037/0033-2909.112.1.155
- Cushman, F. (2008). Crime and punishment: Distinguishing the roles of causal and intentional analyses in moral judgment. *Cognition*, 108, 353–380. doi: 10.1016/j.cognition.2008.03.006
- Cushman, F. (2015). Punishment in humans: From intuitions to institutions. *Philosophy Compass*, 10, 117–133. doi: 10.1111/phc3.12192
- Cushman, F., Sheketoff, R., Wharton, S., & Carey, S. (2013). The development of intent-based moral judgment. *Cognition*, 127, 6–21. doi: 10.1016/j.cognition.2012.11.008
- Darley, J. (2009). Morality in the law: The psychological foundations of citizens' desires to punish transgressions. *Annual Review of Law and Social Science*, 5, 1–23. doi: 10.1146/annurev.lawsocsci.4.110707.172335

- Darley, J. M., Carlsmith, K. M., & Robinson, P. H. (2000). Incapacitation and just deserts as motives for punishment. *Law and Human Behavior*, 24, 659-683. doi: 10.1023/A:1005552203727
- Drolet, C. E., Hafer, C. L., & Heuer, L. (2016). The role of perceived deservingness in the toleration of human rights violations. *Social Justice Research*, 29, 429-455. doi: 10.1007/s11211-016-0273-y
- Faul, F., Erdfelder, E., Lang, A.-G., & Buchner, A. (2007). G*Power 3: A flexible statistical power analysis program for the social, behavioral, and biomedical sciences. *Behavior Research Methods*, 39, 175–191. doi: 10.3758/BF03193146
- Federal Death Penalty Act of 1994, Pub. L. 103-322, title VI, § 60002(a), Sept. 13, 1994, 108 Stat. 1959, codified as amended at 18 U.S.C. § 3592.
- Feigenson, N. R. (1995). The rhetoric of torts: How advocates help jurors think about causation, reasonableness, and responsibility. *Hastings Law Journal*, 47, 61-160. doi: 10.1037/10358-005
- Forbes, R. C., & Stellar, J. E. (2022). When the ones we love misbehave: Exploring moral processes within intimate bonds. *Journal of Personality and Social Psychology*, 122, 16–33. doi:10.1037/pspa0000272
- Guthrie, C., Rachlinski, J. J., & Wistrich, A. J. (2000). Inside the judicial mind. *Cornell Law Review*, 86, 777-829. doi: 10.2139/ssrn.257634
- Hamlin, J. K., Wynn, K., & Bloom, P. (2007). Social evaluation by preverbal infants. *Nature*, 450, 557-559. doi: 10.1038/nature06288
- Heuer, L. (2005). What's Just about the Criminal Justice System-A Psychological Perspective. *JL & Pol'y*, 13, 209-228. doi: 10.1177/0146167299258009

- Heuer, L., Blumenthal, E., Douglas, A., & Weinblatt, T. (1999). A deservingness approach to respect as a relationally based fairness judgment. *Personality and Social Psychology Bulletin*, 25, 1279-1292.
- Holyoak, K. J., & Simon, D. (1999). Bidirectional reasoning in decision making by constraint satisfaction. *Journal of Experimental Psychology: General*, 128, 3-31.
doi: 10.1037/0096-3445.128.1.3
- Kahan, D. M. (2015). Laws of cognition and the cognition of law. *Cognition*, 135, 56-60. doi: 10.1016/j.cognition.2014.11.025
- Kees, J., Berry, C., Burton, S., & Sheehan, K. (2017). An analysis of data quality: Professional panels, student subject pools, and Amazon's Mechanical Turk. *Journal of Advertising*, 46, 141-155. doi: 10.1080/00913367.2016.1269304
- Kelman, M. (2013). Intuitions. *Stanford Law Review*, 65, 1291-1323.
- Landy, J. F., & Uhlmann, E. L. (2018). Morality is personal. In K. Gray, J. Graham (Eds.), *Atlas of Moral Psychology* (pp. 121-132). New York: Guilford Publications.
- Levin, T. (1967). Toward a More Enlightened Sentencing Procedure. *Nebraska Law Review*, 45, 499-512. doi: 10.1037/e438152008-038
- Lynch, J. M., Lane, J. D. Berryessa, C. M., & Rottman, J. (2019). How information about perpetrators' nature and nurture influences assessments of their character, mental states, and deserved punishment. *PloS One*. doi: 10.1371/journal.pone.0224093
- Meixner, J. B. (2022). Modern sentencing mitigation. *Northwestern University Law Review*, 116, 1-72 (forthcoming).
- Nadler, J. (2012). Blaming as a social process: The influence of character and moral emotion on blame. *Law and Contemporary Problems*, 75, 1-31.

- Nadler, J., & McDonnell, M. H. (2011). Moral character, motive, and the psychology of blame. *Cornell Law Review*, 97, 255-300.
- Pennington, N., & Hastie, R. (1986). Evidence evaluation in complex decision making. *Journal of Personality and Social Psychology*, 51, 242-258. doi: 10.1037/0022-3514.51.2.242
- Pennington, N., & Hastie, R. (1988). Explanation-based decision making: Effects of memory structure on judgment. *Journal of Experimental Psychology: Learning, Memory, and Cognition*, 14, 521-533. doi: 10.1037/0278-7393.14.3.521
- Pennington, N., & Hastie, R. (1990). Practical implications of psychological research on juror and jury decision making. *Personality and Social Psychology Bulletin*, 16, 90-105. doi: 10.1177/0146167290161007
- Pennington, N., & Hastie, R. (1991). A cognitive theory of juror decision making: The story model. *Cardozo Law Review*, 13, 519-557.
- Pennington, N., & Hastie, R. (1992). Explaining the evidence: Tests of the story model for juror decision making. *Journal of Personality and Social Psychology*, 62, 189-206. doi: 10.1037/0022-3514.62.2.189
- Rachlinski, J. J., & Wistrich, A. J. (2017). Judging the judiciary by the numbers: Empirical research on judges. *Annual Review of Law and Social Science*, 13, 203-229. doi: 10.1146/annurev-lawsocsci-110615-085032
- Robbins, P., & Litton, P. (2018). Crime, punishment, and causation: The effect of etiological information on the perception of moral agency. *Psychology, Public Policy, and Law*, 24, 118-127. doi: 10.1037/law0000146
- Robinson, P. H., & Darley, J. M. (1995). *Justice, liability, and blame: Community views and the criminal law*. Boulder, CO: Westview. doi: 10.4324/9780429039812-7

- Robinson, P. H., Jackowitz, S. E., & Bartels, D. M. (2012). Extralegal punishment factors: A study of forgiveness, hardship, good deeds, apology, remorse, and other such discretionary factors in assessing criminal punishment. *Vanderbilt Law Review*, 65, 737-826.
- Uhlmann, E. L., Pizarro, D. A., & Diermeier, D. (2015). A person-centered approach to moral judgment. *Perspectives on Psychological Science*, 10, 72–81.
doi: 10.1177/1745691614556679
- Warriner, A.B., Kuperman, V., & Brysbaert, M. (2013). Norms of valence, arousal, and dominance for 13,915 English lemmas. *Behavior Research Methods*, 45, 1191-1207.
- Winter, L., & Uleman, J. S. (1984). When are social judgments made? Evidence for the spontaneousness of trait inferences. *Journal of personality and social psychology*, 47, 237-252. doi: 10.1037/0022-3514.47.2.237
- Young, L., & Tsoi, L. (2013). When mental states matter, when they don't, and what that means for morality. *Social and Personality Psychology Compass*, 7, 585–604.
doi: 10.1111/spc3.12044

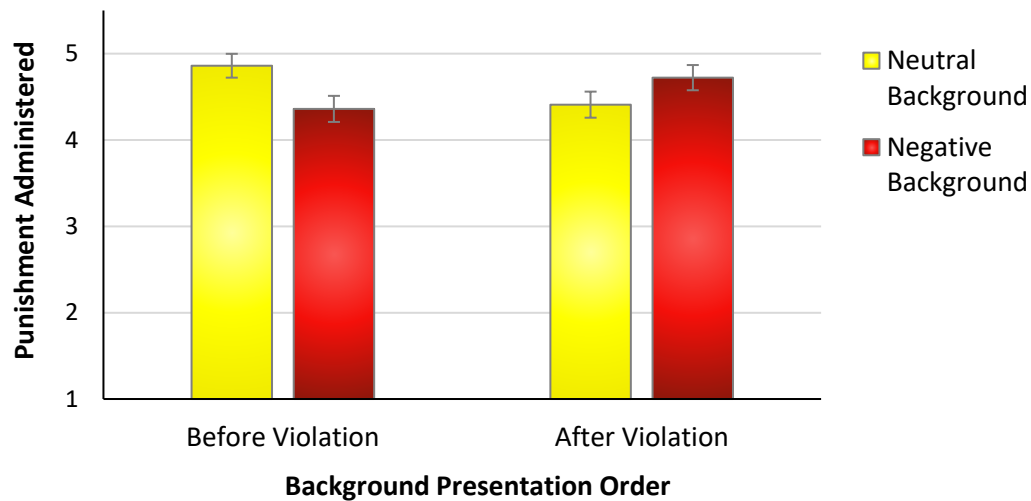


Figure 1. Study 1: Punishment decisions based on the nature of the perpetrator's background (neutral vs. negative) and the order in which the background information was presented (before vs. after the violation). Higher values on the y-axis indicate greater punishment. Error bars represent +/- 1 standard error of the mean.

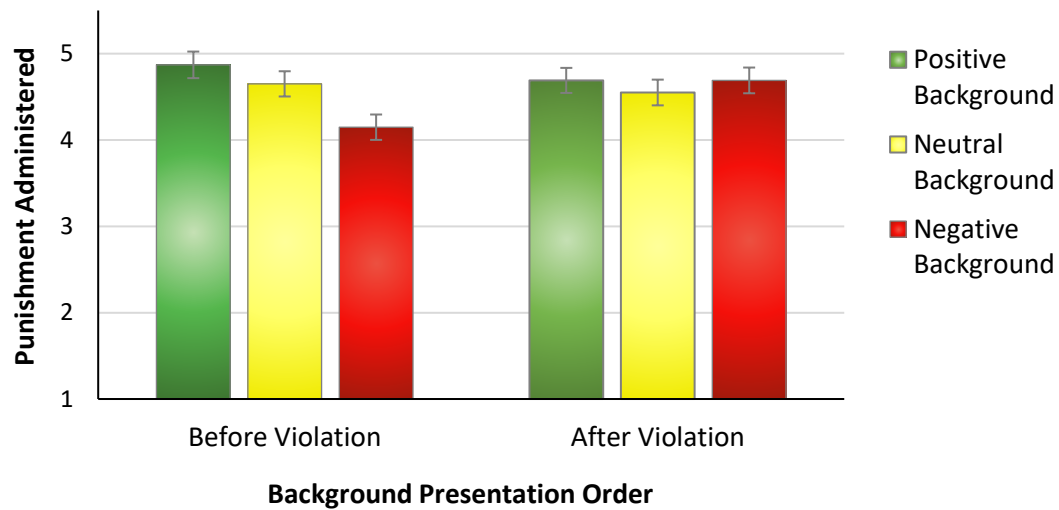


Figure 2. Study 2: Punishment decisions based on the nature of the perpetrator's background (positive, neutral, or negative) and the order in which the background information was presented (before vs. after the violation). Higher values on the y-axis indicate greater punishment. Error bars represent +/- 1 standard error of the mean.

DAILY COMMENT

HOW A NEW APPROACH TO PUBLIC DEFENSE IS OVERCOMING MASS INCARCERATION

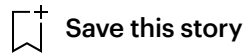
Public defenders represent eighty per cent of all people charged with a crime in this country, and they typically work in offices that are underfunded and understaffed.

By Sue Halpern

October 5, 2023



The successes of Partners for Justice, a scrappy nonprofit, suggest that some of the most pernicious structural impediments to due process are surmountable. Photograph by Kevin Vandenberghe / Getty



June 15th should have been one of the best days of Mohammed Sanogo's life. An honors student with a perfect G.P.A., he had just walked across the stage at his high-school graduation, in Delaware, and was looking forward to attending the University of Maryland Honors College to study aerospace engineering. Before he left the parking lot at the University of Delaware, where the ceremony was held, Sanogo, a Muslim, stopped to pray with a few friends. For reasons that are in dispute, a few minutes later, as Sanogo was driving away, campus police stopped his vehicle, demanded that he get out of the car, and, after he did, picked him up and threw him to the ground. Video shot by students at the scene shows officers kneeling on his back to cuff him, as Sanogo struggles to get out of their grip and shouts that he has a "condition"—asthma. He was arrested, charged with reckless driving and resisting arrest, and jailed. The future that he'd been imagining for himself just hours earlier—studying at Maryland, working for NASA—was replaced by the prospect of becoming yet another incarcerated young Black man.

But that is not what happened, after Sanogo's case was assigned to the Delaware public defender's office, in Wilmington. Five years ago, that office became one of two two-year pilot programs for Partners for Justice (P.F.J.), a scrappy nonprofit with an improbable mission: to transform the public criminal-defense system. (The other pilot program was in Alameda County, California, which includes the city of Oakland; both offices are still in operation.) Then as now, public defenders represent eighty per cent of all people charged with a crime, and they typically work in offices that are underfunded and understaffed. Their clients are primarily poor people of color who are often in need of health care, housing, transportation, addiction treatment, child care, and a host of other services. According to a report from the Prison Policy Initiative, "At least 1 in 4 people who go to jail will be

arrested again within the same year—often those dealing with poverty, mental illness, and substance use disorders, whose problems only worsen with incarceration.” But lawyers are not social workers; they do not have the time or the skills to help their clients deal with those problems, even if those problems contributed to their criminal behavior in the first place and may do so again in the future.



Replay

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As a public defender in Santa Clara County, California, and in the Bronx, Emily Galvin-Almanza, P.F.J.’s co-founder and co-executive director, with Rebecca Solow, witnessed this problem firsthand. “If you are a defender practicing in an office where there are only criminal-defense attorneys, it’s like being in a hospital with no nurses,” Galvin-Almanza told me. The way to change this dynamic, she believed, was to embed a cohort of advocates in each office to take on tasks that

would boost a client's chances for a good outcome, not just in court but in life. The advocates would be trained in storytelling so they could write a persuasive account of a defendant's circumstances, and would help them navigate social services, find housing, enroll in benefits programs, and in other ways stabilize their lives. P.F.J. calls this approach "collaborative defense," because the accused are working alongside the advocates and the legal team.

In Sanogo's case, as soon as he was assigned a public defender, an advocate in Wilmington got to work. In less than a week, the advocate collected more than forty letters attesting to Sanogo's good character. The advocate also wrote what his attorney, Misty Seemans, said was the best narrative about a client she had ever read, highlighting Sanogo's accomplishments and explaining that he was the sort of young person who normally would have never got caught up in the criminal-justice system. After the prosecutor reviewed this "mitigation package," the charges were dropped. Sanogo matriculated at Maryland this fall. (The University of Delaware maintains that the police officers acted appropriately, but said in a statement that it "will continue its review of this situation to look for learning opportunities.")

In a way, providing this kind of support is not new. In 1990, the Vera Institute of Justice (where I once worked) opened the Neighborhood Defender Service in Harlem, a law office staffed with social-work interns, immigration experts, and client advocates, in addition to lawyers who specialized in a variety of practice areas. Seven years later, the Bronx Defenders was created by a group of lawyers and advocates who aimed to do something similar in the South Bronx; Galvin-Almanza worked there for a number of years. Both organizations have been remarkably successful in demonstrating that a holistic approach to criminal defense benefits the accused, their families, the community, and the public at large. A study by researchers at the University of Pennsylvania Law School and the RAND Corporation found that, over ten years, defendants represented by the

Bronx Defenders spent more than a million fewer days behind bars, and well more than four thousand people avoided jail time entirely.

But what worked in New York City, Galvin-Almanza realized, was not necessarily transferrable to other municipalities. “Every public defender has their own culture and political context and challenges and community,” she told me. “And, if you just show them a New York City defender and say, ‘Hey, do this,’ they think, Oh, my God, I could never do that. I don’t know where to start.” But, she added, “If you say, ‘O.K., we’re going to take one element of this, and we’re going to bring it to your practice, and we’re going to build it for you, and we’re going to give you all the training you need to utilize it,’ we can get more defenders getting the results of a holistic defender.”

The right of a criminal defendant to “Assistance of Counsel for his defence” was established in the Sixth Amendment, which was ratified in 1791, though that assistance was limited to federal crimes. Not quite eighty years later, the Fourteenth Amendment insured that “nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” But those were just words, as Clara Shortridge Foltz, an early proponent of public defenders, noted in a speech delivered at the World’s Congress Auxiliary on Jurisprudence and Law Reform, in Chicago, in 1893. “For the conviction of the accused every weapon is provided and used, even those poisoned by wrong and injustice,” she said. “But what machinery is provided for the defense of the innocent? None. Absolutely none. For its lesser duty of convicting the guilty it has equipped and maintains an array and gives access to the public funds; for the higher one of defense of the innocent there is neither counsel nor officer nor money.”

It wasn’t until the unanimous 1963 Supreme Court decision in Gideon v. Wainwright that the Court established that anyone charged with a crime has the right to a lawyer, even if they cannot pay for one. “Reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into

court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him,” Justice Hugo Black wrote in the Court’s opinion, adding that a fair trial “cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.” But the Court did not determine how this was to be achieved.

Though the Gideon decision resulted in the proliferation of public-defender offices across the country, more often than not they were—and continue to be—afforded fewer resources than those who represent the government. In California, prosecutors are annually allocated a billion dollars more than public defenders. In New Orleans, the city budgeted six million dollars for the district attorney’s office, and a million and a half for public defenders in 2018. Consequently, public defenders are not only underpaid but saddled with enormous caseloads. Lawyers in Washington, Nebraska, Rhode Island, New York, and Maryland have reported that they are assigned around a thousand cases a year; a 2017 study estimated that in Louisiana approximately 3,679,792 hours of work would be required for attorneys to meet the annual public-defense caseload. And, with around ninety-seven per cent of federal cases and ninety-four per cent of state cases dispatched by plea bargains—many of them coerced when a prosecutor tacks on additional charges that threaten long jail sentences if the plea is not taken—it is no wonder that nearly two million people are incarcerated in the United States, which has more people jailed per capita than any other nation.

In 2019, then Senator Kamala Harris, a career prosecutor, introduced the Ensuring Quality Access to Legal Defense (EQUAL) Act, a bill that would, among other things, establish workload limits for public defenders and make their salaries commensurate with those of prosecutors. It went nowhere. The bill was reintroduced in 2021 and again failed to gain traction. It was revived once more this year in the House, where it is still pending, as is a comparable bill, introduced in March by the senators Cory Booker and Dick Durbin, to mark the sixtieth anniversary of Gideon v. Wainwright. GovTrack.us, a Web site that follows the

trail of congressional legislation, gives the new Senate bill an eight-per-cent chance of adoption.

Even if Congress does not act anytime soon, P.F.J.'s successes suggest that some of the most pernicious structural impediments to due process are surmountable. Mohammed Sanogo may be an exceptional young person, but the outcome of his case was not. Galvin-Almanza told me that, in Delaware, in nearly ninety per cent of the cases in which a mitigation memo was submitted, P.F.J. clients receive no jail or prison time, and more than seventy per cent have their charges dropped. As a consequence, she estimates that P.J.F. has prevented six hundred years of incarceration in the state. (This is calculated from clients' actual outcomes subtracted from their potential maximum sentences.) The pilot project was so beneficial that client advocates are now embedded in every county in Delaware, and the program, which was initially supported by philanthropic dollars, is now funded with public monies.

Delaware, of course, is a small state, and even Oakland, the site of the other pilot, has just about half the population of San Francisco, across the bay. But, even before the two-year demonstration projects had concluded, Galvin-Almanza and Solow were fielding calls from public-defender offices around the country. There are now P.F.J.-trained advocates in twenty-four locations as diverse as the Flathead Indian Reservation in Montana and the urban centers of Houston and Miami. By one estimate, they have prevented five thousand years of jail and prison time and, since this program reduces incarceration, it creates the option for jurisdictions to reduce their spending on jails. Every dollar spent on the P.F.J. program, then, creates the possibility of saving three to six dollars from the cost of operating a facility.

“We really, really want to live in a world where by 2030 you can’t find a public-defense agency that’s only doing criminal defense—where everybody has these capabilities to problem-solve and address the underlying drivers of crime and also help their clients avoid incarceration and find better opportunities,” Galvin-

Almanza told me. She added, “I became a public defender because I couldn’t imagine myself waking up in the morning knowing there’s somebody sitting in jail, and I’m in a position to do something that could help bring them home. How could I not do this?” ♦

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Sue Halpern is a staff writer at The New Yorker. She is the author of, most recently, the novel “Summer Hours at the Robbers Library.”

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THE FIRST STEP ACT OF 2018: FSA Time Credits

Sentencing Resource Counsel for the Federal Public and Community Defenders (updated May 2023)

Earning FSA Time Credits

All eligible persons: earn **10 days** of FSA Time Credits for every 30 days of successful participation in evidence-based recidivism reduction (EBRR) programs or productive activities (PAs) that BOP has recommended based on risk & needs assessment.

Persons in min/low risk categories who “over 2 consecutive assessments” have not increased their risk category shall earn “an **additional 5 days** of time credits for every 30 days of successful participation.”

Qualifying Participation: must be on or after: FSA enactment (Dec. 21, 2018) & commencement of sentence.

Credits awarded for every 30-day period in “earning status,” *i.e.*, participating in or awaiting participation in EBRR programs and PAs recommended based on risk and needs assessment.

See 18 U.S.C. § 3632(d)(4); 28 C.F.R. §§ 523.41, 523.42; Prog. Stat. 5410.01

Successful Participation Does Not Include:

- 1) Special Housing Unit (disciplinary segregation only)
- 2) Designation status outside institution (*e.g.*, extended medical, furlough)
- 3) Temporary transfer to other agency custody (including federal writs)
- 4) Mental health/psychiatric holds
- 5) Opted out of recommended EBRR/PAs; refused to complete needs assessments

See 28 C.F.R. 523.41(c)(4)(i)–(v); Prog. Stat. 5410.01

Assessments

Initial classification “ordinarily” completed within 28/30 days of arrival to designated facility.

Persons who “successfully participate” in programming shall receive reassessments “not less often than annually”; those in medium/high risk categories who are less than 5 years from release shall receive “more frequent” reassessments.

Persons in prerelease custody: [gobbledygook]

See 18 U.S.C. § 3632(d)(5); Prog. Stat. 5410.01

Using FSA Time Credits

FSA time credits shall be applied when individual has: (A) earned credits equal to remainder of prison term and (B) has either maintained min/low risk or “demonstrated recidivism risk reduction” in reassessments.

For early transfer to **supervised release** (not to exceed 12 months):

- (1) Min/low risk for last reassessment; and
- (2) Has a term of supervised release as part of sentence.

For **prerelease custody** (home confinement or RRC):

- (1) Min/low risk for last 2 reassessments; or
- (2) With warden approval after determining (a) no danger to society; (b) good-faith effort to lower recidivism risk through programming; and (c) unlikely to recidivate. *For those with medium/high risk, BOP deems warden approval an “exception” and sets additional criteria in Prog. Stat. 5410.01.*

See 18 U.S.C. §§ 3624(g)(1)–(3), (10), 3632(d)(4)(C); 28 C.F.R. 523.44; Prog. Statement 5410.01

Ineligible for FSA Time Credits

Ineligible to receive FSA Time Credits if “serving a sentence for a conviction”* under any of the following:

- | | | |
|--|--|---|
| <ul style="list-style-type: none"> • 18 U.S.C. § 32 • 18 U.S.C. § 33 • 18 U.S.C. § 36 • 18 U.S.C. § 81 • 18 U.S.C. § 111(b) • 18 U.S.C. § 113(a)(1), (7), (8) • 18 U.S.C. § 115, <u>except</u> threats • 18 U.S.C. § 116 • 18 U.S.C. § 117 • Ch. 10 (18 U.S.C. §§ 175, 178: biological weapons) • Ch. 11B (18 U.S.C. §§ 229–229F: chemical weapons) • 18 U.S.C. § 351 • 18 U.S.C. § 521 • 18 U.S.C. § 751 • 18 U.S.C. § 793 • 18 U.S.C. § 794 • Ch. 39 (18 U.S.C. §§ 831–835: explosives), <u>not</u> § 836 • 18 U.S.C. § 842(p) <u>if</u> weapon of mass destruction • 18 U.S.C. § 844(f)(3), (h), (i) • 18 U.S.C. § 871 • 18 U.S.C. § 879 • 18 U.S.C. § 924(c) • 18 U.S.C. § 1030(a)(1) • 18 U.S.C. § 1091 | <ul style="list-style-type: none"> • Ch. 51 (18 U.S.C. §§ 1111–1122: homicide) <u>except</u> §§ 1112, 1113 (attempted manslaughter.), 1115, 1122 • Ch. 55 (18 U.S.C. §§ 1201–1204: kidnapping) • Ch. 77 (18 U.S.C. §§ 1581–1597: peonage/slavery) <u>except</u> §§ 1593–1596 • 18 U.S.C. § 1751 • 18 U.S.C. § 1791 • 18 U.S.C. § 1792 • 18 U.S.C. § 1841(a)(2)(C) • 18 U.S.C. § 1992 • 18 U.S.C. § 2113(e) • 18 U.S.C. § 2118(c) • 18 U.S.C. § 2119 • Ch. 105 (18 U.S.C. §§ 2151–2156: sabotage) <u>except</u> § 2152 • Ch. 109A (18 U.S.C. § 2241–2248: sex abuse) • 18 U.S.C. § 2250 • 18 U.S.C. § 2251 • 18 U.S.C. § 2251A • 18 U.S.C. § 2252 • 18 U.S.C. § 2252A • 18 U.S.C. § 2260 • 18 U.S.C. § 2283 • 18 U.S.C. § 2284 | <ul style="list-style-type: none"> • 18 U.S.C. § 2291 <u>if</u> substantial risk of death/SBI • Ch. 113B (18 U.S.C. §§ 2331–2339D: terrorism) • 18 U.S.C. § 2340A • 18 U.S.C. § 2381 • 18 U.S.C. § 2442 • 18 U.S.C. § 3559(c)(2)(F) <u>if</u> > 1-year prison sentence <u>and</u> certain prior convictions • 42 U.S.C. § 2077(b) • 42 U.S.C. § 2122 • 42 U.S.C. § 2131 • 42 U.S.C. § 2274 • 42 U.S.C. § 2275 • 42 U.S.C. § 2284 • 49 U.S.C. § 60123(b) <u>if</u> sub. risk of death/SBI • 21 U.S.C. § 841(b)(1)(A–C) <u>if</u> death/SBI • 8 U.S.C. § 1326(b)(1), (2) • 8 U.S.C. § 1327 • 8 U.S.C. § 1328 • 50 U.S.C. § 4611 <u>et seq.</u> • 50 U.S.C. § 1705 • 50 U.S.C. § 3121 • 21 U.S.C. §§ 841(b)(1)(A)(vi) <u>or</u> (B)(vi) <u>or</u> 960(b)(1)(F) <u>or</u> (2)(F) (fentanyl/analogue) |
|--|--|---|

Ineligible to receive FSA Time Credits if “serving a sentence for conviction”* + court-findings:

- 21 U.S.C. §§ 841(b)(1)(A)(i) or (B)(i) or 960(b)(1)(A) or (2)(A) (**heroin**) and court finds role enhancement
- 21 U.S.C. §§ 841(b)(1)(A)(viii) or (B)(viii) or 960(b)(1)(H) or (2)(H) (**meth**) and court finds role enhancement
- 21 U.S.C. §§ 841(b)(1)(A)–(B) or 960(b)(1)–(2) for **any drug** if court finds offense involved fentanyl/analogue and role enhancement

**BOP interpretation:. Ineligible to receive FSA Time Credits if any part of sentence is for an time-credit-ineligible offense (including a revocation of supervised release on such an offense)—even if some or most of aggregate prison sentence is for a time-credit-eligible offense.*

Deportable persons ineligible to apply time credits: Only if subject to a final order of removal under any provision of the INA.

See 18 U.S.C. § 3632(d)(4)(D), (E); Prog. Stat. 5410.01 (for “serious violent felony”)

PATTERN risk assessment scoring links: [Male](#), [Female](#), [Cut Points](#), [Violent Offense Codes](#)

24. **EYES.** Two spaces are provided for the color code. If entered, it must be a valid code found under the Eye Color Code, SENTRY General Use TRM.
25. **ARS ASSIGNMENT.** Use a valid SENTRY category assignment, SENTRY General Use TRM.

SECURITY DESIGNATION DATA

The Security Designation Data section (Items 1 to 18) of the Inmate Load and Security Designation form (BP-337) records sentencing, programing recommendations, and background information from the Judgment, the Statement of Reasons (SOR), and the PSR. This information is used to determine the inmate's security level.

1. JUDGE	2. REC FACILITY	3. REC PROGRAM	4. USM OFFICE
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1. **JUDGE.** Enter the sentencing Judge's last name.
2. **RECOMMENDED FACILITY.** The court may recommend a specific institution or a geographical region for a newly committed inmate. Enter the name of the recommended institution or region. If a specific SENTRY facility code is entered, that facility will appear at the top of the list presented to the Designator for consideration.
3. **RECOMMENDED PROGRAM.** Enter the name or type of any program recommended by the sentencing Judge.
4. **USM OFFICE.** Enter the location of the USM Office (e.g., E/VA-NOR).
5. **VOLUNTARY SURRENDER**

5. VOLUNTARY SURRENDER 0 = NO (-3) = YES	
IF YES, MUST INDICATE: 5a. VOLUNTARY SURRENDER DATE: _____ and 5b. VOLUNTARY SURRENDER LOCATION: _____	

This item allows for the subtraction of three points from the Security Point Total, Item 15, when the Judgment indicates the inmate was allowed to voluntarily surrender. For purposes of this item, voluntary surrender means the inmate was not escorted by a law enforcement officer to either the U.S. Marshals Office or the place of confinement. Additionally, this item applies only to post-sentencing voluntary surrender, and does not include cases where the inmate surrendered to the U.S. Marshals on the same day as sentencing. Voluntary Surrender Credit may only be

applied to the initial term of confinement; it may not be applied to any subsequent Supervised Release, Mandatory Release or parole Violation return to custody.

5a. **VOLUNTARY SURRENDER DATE.** If the court has provided for voluntary surrender, enter the date of the voluntary surrender in this block. If the court provided for voluntary surrender but did not provide a specific date for the surrender, the DSCC will contact the court to establish a mutually agreeable date.

NOTE: In cases where the court allows the inmate to voluntarily surrender but the inmate will not receive (-3) points on this item the date will still be entered on this item.

5b. **VOLUNTARY SURRENDER LOCATION.** The DSCC will note whether the inmate is to voluntarily surrender to the USMS or to the designated institution.

6. MONTHS TO RELEASE

6. MONTHS TO RELEASE _____

This item reflects the estimated number of months the inmate is expected to be incarcerated. Consecutive federal sentences will be added together for classification purposes. Federal sentences may have different beginning dates, based on the Judgment Order. There may even be a computation in SENTRY with a beginning date in the future. Based on the inmate's sentence(s), enter the total number of months remaining, less 15% (for sentences over 12 months), and credit for any jail time served. This item is not figured into the security point total but impacts the Sentence Length Public Safety Factor.

Example: An adult convicted of Breaking and Entering under the Sentence Reform Act is sentenced to eight years. The expected length of incarceration is (96 months x 85% = 81.6 months). Round to the nearest whole number to get 82 and subtract any jail time credit (180 days) = 76 months to release.

NOTE: Enter 540 months for death penalty cases, life sentences, and Parolable life sentences for which a parole date has not been established.

7. SEVERITY OF CURRENT OFFENSE

7. SEVERITY OF CURRENT OFFENSE	0 = LOWEST 1 = LOW MODERATE	3 = MODERATE 5 = HIGH	7 = GREATEST	
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Enter the appropriate number of points that reflect the most severe documented instant offense behavior regardless of the conviction offense. For multiple offenses, the highest score will be used in scoring the current offense. Staff will consider the offense behavior on all sentences, including federal sentences that have a future beginning date or a previous D.C. or state sentence if there was no physical release from custody.

NOTE: This will require DSCC staff to make reasonable efforts to obtain documentation.

Severity is determined by using the Offense Severity Scale (Appendix A).

Example: According to the PSR, the individual was involved in an Assault With Serious Injury (Greatest severity level) but pled guilty to a Simple Assault (Moderate severity level). Assign the points on the basis of the more severe documented behavior, i.e., assign 7 points (Greatest severity level).

In determining "Severity of Current Offense" staff must review the Statement of Reasons (SOR) and ensure the information provided is appropriately used in classifying the inmate.

Example: According to the PSR the individual was involved in a drug conspiracy responsible for distribution of 31 grams of Cocaine Base "Crack", but was individually only responsible for 2 grams, he/she would be scored as Moderate Severity for this item. However, the SOR, indicates the Sentencing Judge found the individual responsible for less than 1 gram; therefore, the appropriate scoring should be Low Moderate severity.

● PROCEDURES FOR PAROLE, MANDATORY RELEASE, SPECIAL PAROLE TERM, OR SUPERVISED RELEASE VIOLATORS

If the violation was the result of new criminal conduct, regardless of conviction status, use the new criminal conduct for scoring "Severity of Current Offense" (see Appendix A). If the violation behavior was a technical violation, score the "Severity of Current Offense" as Low Moderate.

The original offense behavior which occurred prior to the violation is considered past behavior and is not used in determining "Severity of Current Offense."

● PROCEDURES FOR PROBATION VIOLATORS

The original offense behavior that resulted in probation should be used for scoring "Severity of Current Offense" (see Appendix A). However, if the new criminal conduct (violation behavior) is more severe than the original offense behavior, then use this behavior for scoring "Severity of Current Offense." **The most severe documented behavior between the original offense and the violation behavior will be used for scoring "Severity of Current Offense."**

8. CRIMINAL HISTORY SCORE

8. CRIMINAL HISTORY SCORE	0 = 0-1 2 = 2-3	4 = 4-6 6 = 7-9	8 = 10-12 10 = 13 +	
8a. SOURCE OF DOCUMENTED _____ - PRESENTENCE INVESTIGATION REPORT CRIMINAL HISTORY _____ - NCIC III				

Enter the appropriate number of Criminal History Points (CHP). SENTRY will automatically convert the CHP to the Bureau's Criminal History Score (CHS).

The CHS is derived from the US Sentencing Guidelines Criminal History Points, as reflected in the final judgment and the SOR. If not found in either the Judgment or SOR, use the points assessed by the USPO in the PSR.

In some cases the Criminal History Points are not available (i.e., when the PSR is waived, on offenses committed prior to November 1, 1987, state cases, and military and D.C. Code offenders). Under these circumstances the Criminal History Score will be derived from the criminal history documented in the NCIC III Report according to the following procedures:

- (a) Add 3 points for each prior sentence of imprisonment exceeding one year and one month;
- (b) Add 2 points for each prior sentence of imprisonment of at least sixty days not counted in (a);
- (c) Add 1 point for each prior conviction not counted in (a) or (b), up to a total of 4 points for this item; and,

- (d) Add 2 points if the instant offense is a revocation accompanied by a new state or federal conviction, or if the instant offense occurred while under federal supervision including incarceration, probation, parole or supervised release.

The documentation used to assess the Criminal History Points must be provided as specified in all cases.

9. HISTORY OF VIOLENCE

9. HISTORY OF VIOLENCE	NONE	>15 YEARS	10-15 YEARS	5-10 YEARS	<5 YEARS	
MINOR	0	1	1	3	5	
SERIOUS	0	2	4	6	7	

Enter the appropriate number of points that reflect any history of violence, considering only those acts for which there are documented findings of guilt (i.e., DHO, Court, Parole, Mandatory Release, or Supervised Release Violation). This item includes the individual's entire background of criminal violence, excluding the current term of confinement.

Exception: Any institution disciplinary hearing (UDC or DHO) finding that a prohibited act was committed during the current term of confinement will be scored as a history item. DSCC staff must review the Chronological Disciplinary Record (CDR) for inmates who were previously housed in a federal institution or contract facility. Any violent act(s) reflected on the CDR must be scored as a history item. State disciplinary findings must be scored unless there is documentation that the state disciplinary proceedings did not afford due process protection to the inmate.

Severity of violence is determined by the offense behavior regardless of the conviction/finding of guilt offense. History of Violence points combine both seriousness and recency of prior violent incidents to assess the propensity for future violence. Therefore, if there is more than one incident of violence, score the combination of seriousness and recency that yields the highest point score. Prior periods of incarceration will be considered a "history" item if the inmate was physically released from custody and then returned to serve either a violation or a new sentence. In determining time frames, use the date of the documented behavior. Documented information from a juvenile, Youth Corrections Act (YCA) or District of Columbia Youth Rehabilitation Act (DCYRA) adjudication can be used unless the record has been expunged or vacated.

Minor History of Violence - Aggressive or intimidating behavior which is not likely to cause serious bodily harm or death (e.g.,

simple assault, fights, domestic disputes, etc.) There must be a finding of guilt.

Serious History of Violence - Aggressive or intimidating behavior which is likely to cause serious bodily harm or death (e.g., aggravated assault, domestic violence, intimidation involving a weapon, incidents involving arson or explosives, rape, etc.). There must be a finding of guilt.

Example: If an offender was found guilty of homicide 20 years ago and a simple assault 3 years ago, assign 5 points for the simple assault. Or in another case, the offender had guilty findings for homicide 12 years ago; aggravated assault 8 years ago; and fighting 2 years ago, score 6 points for the aggravated assault 8 years ago.

NOTE: Attempted suicide, self-mutilation and possession of weapons are not applicable behaviors for History of Violence scoring. In addition, verbal threats (such as Code 203- Threatening Bodily Harm) are to be viewed as minor violence.

10. HISTORY OF ESCAPE OR ATTEMPTS

10. HISTORY OF ESCAPE OR ATTEMPTS	NONE	>15 YEARS	10-15 YEARS	5-10 YEARS	<5 YEARS	
MINOR	0	1	1	2	3	
SERIOUS	0	3(S)	3(S)	3(S)	3(S)	

Enter the appropriate number of points that reflect the escape history of the individual considering only those acts for which there are documented findings of guilt (i.e., DHO, Court, Parole, Mandatory Release, or Supervised Release Violation). Escape history includes the individual's entire background of escapes or attempts to escape from confinement, or absconding from community supervision, excluding the current term of confinement.

Exception: Any institution disciplinary hearing (UDC or DHO) finding that a prohibited act was committed during the current term of confinement will be scored as a history item. DSCC staff must review the Chronological Disciplinary Record (CDR) for inmates who were previously housed in a federal institution or contract facility. Any escape(s) or attempt(s) reflected on the CDR must be scored as a history item. State disciplinary findings are to be scored unless there is documentation that the state disciplinary proceedings did not afford due process protection to the inmate.

Fleeing or Eluding Arrest, Failure to Appear for traffic violations, Absconding, runaways from foster homes and similar

behavior should not to be scored under the Escape History item, even if clearly documented, but should be considered on a case-by-case basis under the Management Variable "Greater Security." Failure to Appear or Flight to Avoid Prosecution for any offense however, must be counted when there is a documented finding of guilt.

In determining time frames, use the date of the documented occurrence. Documented information from a juvenile, YCA, or DCYRA adjudication can be used unless the record has been expunged or vacated.

Minor History of Escape - An escape from an open institution or program (e.g., minimum security facility, CCC, furlough) not involving any actual or threat of violence. Also includes military AWOL, Bail Reform Act, Flight to Avoid Prosecution, and Absconding from Community Supervision. There must be a finding of guilt except as previously noted.

Serious History of Escape - An escape from secure custody with or without threat of violence. Also includes escapes from an open facility or program with actual threat of violence. There must be a finding of guilt. S = 3 points and requires application of PSF L.

11. TYPE OF DETAINER

11. TYPE OF DETAINER	0 = NONE 1 = LOWEST/LOW MODERATE	3 = MODERATE 5 = HIGH	7 = GREATEST	
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Enter the appropriate number of points that reflect detainer status. Refer to the Offense Severity Scale, Appendix A. Determination is based on the offense of the most serious detainer.

- If there is a pending charge, points based on the documented behavior are assigned on the "Type of Detainer" item. If the pending charges or detainer involve a probation violation, use the most severe documented behavior in the original offense as the basis for assigning points in scoring the detainer.

If law enforcement officials indicate a firm intent to lodge a detainer, consider it lodged. Score a concurrent state sentence as a detainer only if it is expected that the state sentence will exceed the federal sentence. However, score consecutive state sentences, lodged state detainers, and/or state parole violation terms/warrants as detainers.

- Consecutive federal sentences are ordinarily not lodged as detainers because federal sentences are computed as they are received. If there is more than one sentence, the most severe offense will be used as "Severity of Current Offense."

Example: For an individual with two detainers for Violation of Firearms Act (Moderate severity level) and one for Extortion (High severity level), use High = 5 points and enter "5".

- No points will be awarded for U.S. Parole Commission warrants (adjudicated or unadjudicated). However, the original offense behavior will be factored into the criminal history points and the violation behavior (including new offense behavior) will be scored as the instant offense.
- No points will be awarded for ICE detainers. However, each case will be carefully reviewed to determine whether the PSF for Deportable Alien is applicable.

12. AGE

12. AGE	0 = 55 and over 2 = 36 through 54	4 = 25 through 35 8 = 24 or less	
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SENTRY will automatically enter the appropriate number of points based on the inmate's date of birth. Staff do not have to manually enter an offender's age or points on the BP-337. If the offenders date of birth is unknown, SENTRY will default to a score of 4 points.

13. EDUCATION LEVEL

13. EDUCATION LEVEL	0 = Verified High School Degree or GED 1 = Enrolled in and making satisfactory progress in GED Program 2 = No verified High School Degree/GED and not participating in GED Program	
13a. HIGHEST GRADE COMPLETED	_____	

Enter the appropriate number of points that reflect the inmate's verified education level at the time of designation.

In addition to the points assigned for the education level, the highest grade completed (HGC) will also be recorded on the BP-337. For example, an inmate who began, but did not complete the 7th grade will be given a 6 in the HGC field. Similarly, a GED will be given a 12, a college graduate a 16, a Master's degree an 18, and a Ph.D. a 21 (the maximum allowed) in the HGC field. The

value entered for the HGC should, unless missing, be consistent with the points assessed for the inmates education level. If missing, enter a "U" for unknown.

14. DRUG/ALCOHOL ABUSE

14. DRUG/ALCOHOL ABUSE	0 = Never/ >5 Years	1 = <5 Years	
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Enter the appropriate number of points that reflect drug or alcohol abuse by the inmate. Examples of drug or alcohol abuse include: a conviction of a drug or alcohol related offense, a parole or probation violation based on drug or alcohol abuse, positive drug test, a DUI, detoxification, etc. Absent any information similar to the above, an inmate's self-report is sufficient to score this item. If this information is unknown enter a "U" and the item will be scored as zero.

15. SECURITY POINT TOTAL

15. SECURITY POINT TOTAL	
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Enter the sum of Items 5 through 14.

16. PUBLIC SAFETY FACTORS

16. PUBLIC SAFETY FACTORS	A -NONE B -DISRUPTIVE GROUP (males only) C -GREATEST SEVERITY OFFENSE (males only) F -SEX OFFENDER G -THREAT TO GOVERNMENT OFFICIALS H -DEPORTABLE ALIEN	I -SENTENCE LENGTH (males only) K -VIOLENT BEHAVIOR (females only) L -SERIOUS ESCAPE M -PRISON DISTURBANCE N -JUVENILE VIOLENCE O -SERIOUS TELEPHONE ABUSE	

See Chapter 5, pages 7-13 for a description of Public Safety Factors and their application.

17. REMARKS

17. REMARKS

A brief explanation of the current offense(s) is required in the "Remarks" section. Similarly, Pre-Sentence Investigation Report information relevant to other scoring items that may have an impact on the designation process or the transportation of the inmate (e.g., medical or psychiatric information, or arrest behavior with no conviction) must also be noted in this section. Refer to Appendix C, Standard Abbreviations/Terms. Also, the

individual scoring the case will enter his or her initials at the end of the "Remarks" section.

18. OMDT REFERRAL

18. OMDT REFERRAL (YES/NO) _____

The Medical Designator, Office of Medical Designations Transportation (OMDT), must review all cases in which there is a physical or mental health concern. Enter "Y" (yes) or N (no) in this category. The response will determine which daily log will reflect the designation information.

DESIGNATION AND SENTENCE COMPUTATION CENTER ACTION - INITIAL DESIGNATION

It is extremely important for Designators to communicate on a regular basis to ensure that designation decisions are consistent. The Correctional Programs Division encourages the need for communication and consistency to all Designators.

1. **FACILITY DESIGNATED.** Enter the mnemonic code for the institution designated (Refer to "Enter Initial Designation," SENTRY General Use TRM).
2. **CUSTODY ASSIGNMENT.** Enter the initial custody assignment in accordance with Table 4-1.

Table 4-1

LEVEL OF INSTITUTION INITIALLY DESIGNATED	INITIAL CUSTODY ASSIGNMENT
Minimum	OUT
Low	IN
Medium	IN
High	IN, unless initial designation is to USP Marion or ADX Florence, in which case the initial custody assignment is MAXIMUM.
Administrative	IN, unless inmate is Minimum security level and designation was not for security reasons, in which case the initial custody assignment is OUT.

3. **DESIGNATOR.** The Designator will enter his or her initials.

4. **REASON FOR DESIGNATION.** Designators will use this section to document whether the primary reason for designation was for security reasons or for management reasons.

- Enter "S" if the inmate's security level is the primary reason for designation and the placement is within normal guidelines. If "S" is entered, SENTRY will not permit an entry in the "Management Reason" field.
- Enter "M" if a Management Variable is the primary reason for designation and placement is outside normal guidelines. When "M" is entered, you must enter the appropriate Management Variable(s) (e.g., B = Judicial Recommendation, D = Release Residence, etc.) under the Management Reason item. While one MGTV is generally sufficient, a maximum of three MGTVs may be entered into SENTRY. In the unlikely event that an inmate's designation facility is inconsistent with his or her MSL, at least one additional non-MSL MGTV must be added to support and explain the inconsistency.
- When it is necessary to place an inmate at a particular institution temporarily in order to receive a parole hearing, a secondary designation is required. The DSCC will notify the Warden of the secondary institution via GroupWise. Following the hearing, the institution where the inmate was first placed should review the secondary designation and contact the DSCC if the results of the hearing indicate that a change in the secondary designation is required.

5. **MANAGEMENT VARIABLES.** See Chapter 5, pages 1-6 for a description of Management Variables and their application.

6. **REMARKS.** The Designator will enter any relevant information not already recorded that may have an impact on the designation process or the transportation of the inmate.

BP-337 INMATE LOAD AND SECURITY DESIGNATION FORM

FEDERAL BUREAU OF PRISONS

INMATE LOAD DATA									
1. REGISTER NUMBER									
2. LAST NAME		3. FIRST NAME			4. MIDDLE		5. SUFFIX		
6. RACE		7. SEX		8. ETHNIC ORIGIN		9. DATE OF BIRTH			
10. OFFENSE/SENTENCE									
11. FBI NUMBER									
12. SSN NUMBER									
13. STATE OF BIRTH			14. OR COUNTRY OF BIRTH			15. CITIZENSHIP			
16. ADDRESS-STREET									
17. CITY									
18. STATE		19. ZIP		20. OR FOREIGN COUNTRY					
21. HEIGHT FT ____ IN ____		22. WEIGHT ____ LBS		23. HAIR COLOR		24. EYE COLOR			
25. ARS ASSIGNMENT									
SECURITY DESIGNATION DATA									
1. JUDGE		2. REC FACILITY		3. REC PROGRAM		4. USM OFFICE			
5. VOLUNTARY SURRENDER STATUS 0 = NO (-3) = YES									
IF YES, MUST INDICATE: 5a. VOLUNTARY SURRENDER DATE: _____									
5b. VOLUNTARY SURRENDER LOCATION: _____									
6. MONTHS TO RELEASE _____									
7. SEVERITY OF CURRENT OFFENSE		0 = LOWEST 1 = LOW MODERATE		3 = MODERATE 5 = HIGH		7 = GREATEST			
8. CRIMINAL HISTORY SCORE		0 = 0-1 2 = 2-3		4 = 4-6 6 = 7-9		8 = 10-12 10 = 13 +			
8a. SOURCE OF DOCUMENTED CRIMINAL HISTORY _____ - PRESENTENCE INVESTIGATION REPORT or _____ - NCIC III									
9. HISTORY OF VIOLENCE		NONE 0 MINOR 0 SERIOUS 0		>15 YEARS 1 10-15 YEARS 1 5-10 YEARS 3 <5 YEARS 5					
10. HISTORY OF ESCAPE OR ATTEMPTS		NONE 0 MINOR 0 SERIOUS 0		>15 YEARS 1 >10 YEARS 1 5-10 YEARS 2 <5 YEARS 3					
11. TYPE OF DETAINER		0 = NONE 1 = LOWEST/LOW MODERATE		3 = MODERATE 5 = HIGH		7 = GREATEST			
12. AGE		0 = 55 and over 2 = 36 through 54		4 = 25 through 35 8 = 24 or less					
13. EDUCATION LEVEL		0 = Verified High School Degree or GED 1 = Enrolled in and making satisfactory progress in GED Program 2 = No verified High School Degree/GED and not participating in GED Program							
13a. HIGHEST GRADE COMPLETED _____									
14. DRUG/ALCOHOL ABUSE		0 = Never/>5 Years		1 = <5 Years					
15. SECURITY POINT TOTAL									
16. PUBLIC SAFETY FACTORS		A-NONE B-DISRUPTIVE GROUP (males only) C-GREATEST SEVERITY OFFENSE (males only) F-SEX OFFENDER G-THREAT TO GOVERNMENT OFFICIALS H-DEPORTABLE ALIEN				I-SENTENCE LENGTH (males only) K-VIOLENT BEHAVIOR (females only) L-SERIOUS ESCAPE M-PRISON DISTURBANCE N-JUVENILE VIOLENCE O-SERIOUS TELEPHONE ABUSE			
17. REMARKS									
18. OMDT REFERRAL (YES/NO) _____									

MANAGEMENT VARIABLES AND PUBLIC SAFETY FACTORS

MANAGEMENT VARIABLES

A Management Variable is required when placement has been made and/or maintained at an institution level inconsistent with the inmate's scored security level. Application of a Management Variable requires review and approval by the DSCC Administrator. When completing the BP-338, institution staff may only enter a Management Variable which the DSCC previously approved and entered as a management reason. Otherwise, the DSCC is the only office authorized to enter a variable. A maximum of three Management Variables may be entered for each case.

NOTE: SENTRY will not permit the simultaneous application of the Greater Security and Lesser Security MGTVs.

When a Management Variable no longer applies, institution staff will remove the variable(s) accordingly. When no Management Variable is required, institution staff will insert the letter "A" (NONE) in the space to signify that no MGTV(s) apply. Management Variables entered at initial designation are manually transferred to the BP-338, Custody Classification form.

Request for Management Variable/Management Variable expiration date. All requests to apply a Management Variable (MGTV) or to update the Management Variable Expiration Date (MVED) must be submitted to the DSCC via GroupWise using the 409 form. Requests for Management Variables on WITSEC inmates are to be forwarded to the Inmate Monitoring Section, Central Office, Washington, DC. The following criteria will be utilized:

Only the DSCC or Central Office staff can apply a MGTV and update a MVED, with the exception of "I" (Med/Psych), which will be applied and reviewed by the Central Office Medical Designator and "U" (Long-Term Detainee), which will be applied by the Detention Services Branch, Correctional Programs Division, Central Office.

When requesting a MGTV or an updated MVED, only sections four and six need to be completed on the form 409. This request should normally be made to the DSCC within 21 calendar days following the inmate's scheduled custody review to ensure the DSCC is receiving a current Custody Classification Form, BP-338. After approval by the Warden, the request may be routed from the unit or shared folders, and unit staff must enter a DST assignment using the Update Transaction. Staff will enter W MGTV

as a DST assignment when the request is routed. DSCC staff will remove the assignment when the decision is made.

When requesting an updated MVED, staff are to indicate the recommended expiration date on the top portion of form 409.

When a case with the MGTV of "I" (Med/Psych) is scheduled for review and it is anticipated that this MGTV is no longer applicable, institution staff will complete all sections of form 409 and forward the request to the Central Office Medical Designator and the DSCC. The Central Office Medical Designator will review the case for continuation or deletion of this MGTV. If this MGTV is no longer appropriate, the Central Office Medical Designator will remove the MGTV. After the Central Office Medical Designator removes the MGTV "I," the DSCC will review the case for transfer. If a transfer is not appropriate, another MGTV is to be applied.

Expiration dates will be assigned in accordance with Table 5-1. The DSCC Administrator must evaluate the information on the form 409 to determine the appropriate expiration date for all applicable Management Variables. At the established expiration date, case management staff will review the current Management Variable(s) to determine appropriateness. In the rare instance when more than one MGTV is applied, all expiration dates will be displayed on the BP-338. When running a SENTRY roster, each MGTV and corresponding MVED will be displayed.

Management Security Level (MSL). Upon application of any of the following Management Variables: PSF Waived; Greater Security; Lesser Security, the DSCC is to apply an overriding Management Security Level (MSL) to reflect the inmate's assessed security needs. This MSL takes precedence over the security level reflected in SENTRY which is based upon the scored security level and the application of Public Safety Factors. Designation must be made to a DFCL commensurate with the inmate's security needs as reflected in the Management Security Level. **If there is an extenuating circumstance in which an inmate's designation facility is inconsistent with his or her MSL, at least one additional non-MSL MGTV must be added to support and explain the inconsistency.**

CODE MGTV - DESCRIPTION

- A None.** No Management Variables apply. Institution staff are permitted to enter this item.
- B Judicial Recommendation.** The sentencing court may recommend a specific institution or program. When consistent with policies or when such actions are consistent with sound correctional management, the Bureau of Prisons attempts to satisfy judicial recommendations. When this is not feasible, the court is notified in writing with an explanation outlining the reasons for not satisfying that recommendation.
- D Release Residence.** The Bureau of Prisons attempts to place each inmate in an institution that is reasonably close to the anticipated release area. Ordinarily, placement within 500 miles of the release area is to be considered reasonable, regardless of whether there may be an institution closer to the inmate's release area. This MGTV may also apply to inmates who are within 36 months of release.
- E Population Management.** Situations may occur in which an inmate requires housing in a facility which is not commensurate with his or her security level. Following are example situations: facility activation; population pressures affecting available appropriate-level bed space within 500 miles of the inmate's anticipated release residence; gang/security concerns.
- G Central Inmate Monitoring Assignment.** Pursuant to the CIM Program Statement, some inmates, for specified reasons, need to be monitored or separated from others. Sometimes these special management concerns limit the options for placement.
- I Medical or Psychiatric.** An inmate who has a history of or is presently exhibiting psychiatric problems may need an initial designation to a psychiatric referral center. Similarly, documented information reflecting that the inmate may need medical or surgical treatment may require a designation to a medical referral center. Designations and redesignations of these inmates will be made by the Central Office Medical Designator.

CODE MGTV - DESCRIPTION

- N Program Participation.** Occasionally, inmates become involved in specialized programs which are only available on a limited basis, or at specific institutions; in such instances, it might be appropriate to delay transfer pending completion of the program. Likewise, an inmate's ability to participate in a unique program may require placement at an institution not commensurate with his or her security level. Accordingly, when an inmate's security level changes during participation in a special program not likely to be available in another appropriate facility, causing placement outside normal guidelines, this MGTV will apply.
- R Work Cadre.** At secure facilities without satellite camps, the Regional Director may authorize a certain number of work cadre inmates to perform work outside the perimeter of the institution. The DSCC will apply the MGTV upon request of the institution.
- S PSF Waived.** An inmate may receive up to three Public Safety Factors (PSFs). PSFs may be waived after review and approval by the DSCC Administrator. When Public Safety Factors are waived causing placement outside normal guidelines, this MGTV will apply. Application of this MGTV mandates that the DSCC Administrator determine the most appropriate level of security required by the inmate and apply a Management Security Level (MSL). The MSL must be at least one level less than the scored security level which is based on the Security Total and PSF(s).
- Request for Public Safety Factor Waiver.** Only the DSCC Administrator is authorized to waive a PSF. A request for waiver of a PSF will be submitted to the DSCC via form 409, available on SALLYPORT. The form 409 will indicate that the request is for waiver of a Public Safety Factor. Items 1 through 7 must be completed when submitting a request for waiver of a PSF.
- U Long-term Detainee.** Long-term detainees are given an initial custody and security level. However, Custody Classification Forms are not to be completed on long-term detainees due to the unavailability or non-applicability of certain data (i.e., current term of confinement, length of time remaining to serve, accurate criminal history). Therefore, transfers for

positive or negative behavior may cause placement in a facility different from his or her scored security or custody level. When needed, this MGTV will be applied by the Detention Services Branch, Correctional Programs Division, Central Office.

Long-term criminal detainees whose security or custody level does not match that of their facility will have this Management Variable applied. This applies as well if an inmate rolls over to the status of a long-term detainee after being ordered detained upon expiration of the federal sentence and the security or custody level does not match that of the designated facility.

V **Greater Security.** There may be security concerns which are not adequately reflected in the classification scheme. In circumstances where an inmate represents a greater security risk (i.e., pending charges, detainer, escape risk, etc.) than their assigned security level, they may be placed in an institution outside normal guidelines, and this MGTV will apply. When this MGTV is applied based on institutional behavior which is **not** supported by a UDC/DHO finding of guilt, staff will ensure compliance with the criteria as set forth in the Program Statement on Inmate Discipline and Special Housing Units. Application of this MGTV mandates the DSCC Administrator determine the most appropriate level of security required by the inmate and apply a Management Security Level (MSL). Designation will then be made to a DFCL commensurate with the inmate's Management Security Level. The MSL must be at least one level greater than the scored security level which is based on the Security Total and Public Safety Factor(s). This MGTV requires up to a 24 month expiration date.

W **Lesser Security.** There may be security concerns which are not adequately reflected in the classification scheme. In circumstances where an inmate represents a lesser security risk (i.e., detainer removed, positive adjustment, etc.) than the assigned security level, the inmate may be placed in an institution outside normal guidelines. For example, where age is largely the contributing factor in the inmate's placement, this Management Variable will apply. Application of this MGTV mandates the DSCC Administrator to determine the most appropriate level of security required by the inmate and apply a Management Security Level (MSL). The MSL must be at least one level less than the scored

security level which is based on the Security Total and Public Safety Factor(s).

DISCONTINUED MANAGEMENT VARIABLES. The following Management Variables have been discontinued: C - Age, F - Racial Balance, H - Voluntary Surrender, J - Custody, K - Detainer, L - Discipline, M - Grandfather Clause, O - Security, P - Sentence Limitation, and Q - Sliding Scale.

Table 5-1

MANAGEMENT VARIABLE EXPIRATION TABLE		
CODE	DESCRIPTION	LENGTH
A	None	N/A
B	Judicial Recommendation	N/A
D	Release Residence/Planning	N/A
E	Population Management	Up to 18 months**
G	Central Inmate Monitoring Assignment	N/A
I	Medical/Psychiatric	6 months
N	Program Participation	Up to 18 months, at the discretion of the Regional Director**
R	Work Cadre	N/A
S	PSF Waived*	N/A (However, if an inmate is transferred to a more secure institution based on behavior related to the waived PSF, this MGTV will be removed.)
U	Long-Term Detainee	N/A
V	Greater Security*	Up to 24 months**
W	Lesser Security*	N/A
* requires application of a Management Security Level (MSL) ** if no expiration date is entered, SENTRY will default to an expiration date 12 months in advance		

PUBLIC SAFETY FACTORS

A Public Safety Factor (PSF) is relevant factual information regarding the inmate's current offense, sentence, criminal history or institutional behavior that requires additional security measures be employed to ensure the safety and protection of the public. Public Safety Factors are normally applied on the Inmate Load and Security Designation Form (BP-337) prior to an inmate's initial assignment to an institution, however, additions or deletions may be made at anytime there after via the Custody Classification Form, (BP-338). A maximum of three PSFs may be applied, however if more than three apply, those which would provide the greatest security and public safety will be utilized.

CODE	PSF - DESCRIPTION
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A	None. No Public Safety Factors apply.
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B	Disruptive Group. A male inmate who is a validated member of a Disruptive Group identified in the Central Inmate Monitoring System will be housed in a High security level institution, unless the PSF has been waived.
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At the time of initial designation, if the Presentence Investigation Report or other documentation identifies the inmate as a possible member of one of the Central Inmate Monitoring Disruptive Groups, DSCC staff will enter a PSF on the BP-337. However, DSCC staff will not enter the CIM assignment "Disruptive Group." Upon loading this PSF on a not-yet-validated member, DSCC staff will (1) make a notation in the Remarks Section to indicate the need for validation upon arrival at the institution, and (2) notify the Central Office Intelligence Section, via GroupWise, to advise them of the inmate's status. Upon the inmate's arrival at the designated institution, the intake screener will notify the institution's Special Investigation Supervisor of the inmate's PSF, to initiate the validation process.

C	Greatest Severity Offense. A male inmate whose current term of confinement falls into the "Greatest Severity" range according to the Offense Severity Scale (Appendix A) will be housed in at least a Low security level institution, unless the PSF has been waived.
----------	---

CODE PSF - DESCRIPTION

F Sex Offender. A **male** or **female** inmate whose behavior in the current term of confinement or prior history includes one or more of the following elements will be housed in at least a Low security level institution, unless the PSF has been waived. A conviction is not required for application of this PSF if the Presentence Investigation Report (PSR), or other official documentation, clearly indicates the following behavior occurred in the current term of confinement or prior criminal history. If the case was dismissed or nolle prosequi, application of this PSF cannot be entered. However, in the case where an inmate was charged with an offense that included one of the following elements, but as a result of a plea bargain was not convicted, application of this PSF should be entered.

Example: According to the PSR, the inmate was specifically described as being involved in a Sexual Assault but pled guilty to Simple Assault. Based on the documented behavior, application of this PSF should be entered:

(1) Engaging in sexual contact with another person without obtaining permission to do so (forcible rape, sexual assault or sexual battery);

(2) Possession, distribution or mailing of child pornography or related paraphernalia;

(3) Any sexual contact with a minor or other person physically or mentally incapable of granting consent (indecent liberties with a minor, statutory rape, sexual abuse of the mentally ill, rape by administering a drug or substance);

(4) Any sexual act or contact not identified above that is aggressive or abusive in nature (e.g., rape by instrument, encouraging use of a minor for prostitution purposes, incest, etc.). Examples may be documented by state or Bureau of Prisons' incident reports, clear NCIC entries, or other official documentation;

(5) Attempts are to be treated as if the sexual act or contact was completed; and/or,

(6) Any offense referenced in the Sex Offender Notification and Registration Program Statement.

CODE PSF - DESCRIPTION

G Threat to Government Officials. A **male** or **female** inmate classified with a Central Inmate Monitoring assignment of Threat to Government Official will be housed in at least a Low security level institution, unless the PSF has been waived.

H Deportable Alien. A male or female inmate who is not a citizen of the United States. All long-term detainees will have this PSF applied. When applied, the inmate or the long-term detainee shall be housed in at least a Low security level institution.

The PSF shall not be applied, or shall be removed when the U.S. Immigration and Customs Enforcement (ICE) or the Executive Office for Immigration Review (EOIR) have determined that deportation proceedings are unwarranted or there is a finding not to deport at the completion of deportation proceedings. The Institution Hearing Program CMA of NO IHP or IHP CMP ND will then be applied. Additionally, the PSF shall not be applied if the inmate has been naturalized as a United States citizen.

I Sentence Length. A **male** inmate with more than ten years remaining to serve will be housed in at least a Low security level institution unless the PSF has been waived.

A **male** inmate with more than 20 years remaining to serve will be housed in at least a Medium security level institution, unless the PSF has been waived.

A **male** inmate with more than 30 years remaining to serve (including non-parolable LIFE sentences) will be housed in a High security level institution unless the PSF has been waived.

K Violent Behavior. A **female** inmate whose current term of confinement or history involves two convictions (or findings of commission of a prohibited act by the DHO) for serious incidents of violence within the last five years will be assigned to at least a Low security level institution, unless the PSF has been waived.

CODE PSF - DESCRIPTION

L Serious Escape. A **female** inmate who has been involved in a serious escape within the last ten years, including the current term of confinement, will be assigned to the Carswell Administrative Unit, unless the PSF has been waived.

A **male** inmate who has escaped from a secure facility (prior or instant offense) with or without the threat of violence or who escapes from an open institution or program with a threat of violence will be housed in at least a Medium security level institution, unless the PSF has been waived.

M Prison Disturbance. A **male** or **female** inmate who was involved in a serious incident of violence within the institution and was found guilty of the prohibited act(s) of Engaging, Encouraging a Riot, or acting in furtherance of such as described in, but not limited to institution disciplinary codes such as 103, 105, 106, 107, 212, 213 or 218. Such a finding must be in conjunction with a period of simultaneous institution disruptions. Males will be housed in at least a HIGH security level institution and females will be assigned to the Carswell Administrative Unit, unless the PSF has been waived.

N Juvenile Violence. A **male** or **female** offender, currently of juvenile age, who has any documented single instance of violent behavior, past or present, which resulted in a conviction, a delinquency adjudication, or finding of guilt. Violence is defined as aggressive behavior causing serious bodily harm or death or aggressive or intimidating behavior likely to cause serious bodily harm or death (e.g., aggravated assault, intimidation involving a weapon, or arson).

O Serious Telephone Abuse. A **male** or **female** inmate who utilizes the telephone to further criminal activities or promote illicit organizations and who meets the criteria outlined below, must be assigned a PSF for Serious Telephone Abuse. A conviction is **not required** for the PSF if the Presentence Investigation Report (PSR) or other official documentation clearly indicates that the above behavior occurred or was attempted. An inmate who meets this criteria must be housed in at

least a Low security level institution, unless the PSF is waived.

The PSF should be entered if any **one** of the following criteria applies.

- (1) PSR or comparable documentation reveals the inmate was involved in criminal activity facilitated by the telephone who:
 - meets the definition of a leader/organizer or primary motivator; or
 - utilized the telephone to communicate threats of bodily injury, death, assaults, or homicides; or
 - utilized the telephone to conduct significant fraudulent activity (actual or attempted) in an institution; or
 - leader/organizer who utilized the telephone to conduct significant fraudulent activity (actual or attempted) in the community; or,
 - arranged narcotic/alcohol introductions while confined in an institution.
- (2) Federal law enforcement officials or a U.S. Attorney's Office notifies the Bureau of Prisons of a significant concern and need to monitor an inmate's telephone calls;
- (3) The inmate has been found guilty of a 100 or 200 level offense code for telephone abuse.

NOTE: 200 level offense codes will be reviewed on a case-by-case basis.

- (4) A Bureau of Prisons official has reasonable suspicion and/or documented intelligence supporting telephone abuse.

NOTE: Any inmate who is assigned the Serious Telephone Abuse PSF may be subject to telephone restriction in accordance with the Telephone Regulations for Inmates Program Statement.

DISCONTINUED PUBLIC SAFETY FACTORS

D Firearms **E** High Drug **J** Designation Assessment

Table 5-2

SECURITY DESIGNATION TABLE (MALES)		
INMATE SECURITY LEVEL ASSIGNMENTS BASED ON CLASSIFICATION SCORE AND PUBLIC SAFETY FACTORS		
Security Point Total	Public Safety Factors	Inmate Security Level
0 - 11	No Public Safety Factors Deportable Alien Juvenile Violence Greatest Severity Offense Sex Offender Serious Telephone Abuse Threat to Government Officials Sentence Length Time remaining > 10 Yrs Time remaining > 20 Yrs Time remaining > 30 Yrs (Includes non-parolable LIFE and Death penalty cases) Serious Escape Disruptive Group Prison Disturbance	Minimum Low Low Low Low Low Low Low Medium High Medium High High
12 - 15	No Public Safety Factors Serious Escape Sentence Length Time remaining > 20 Yrs Time remaining > 30 Yrs (Includes non-parolable LIFE and Death penalty cases) Disruptive Group Prison Disturbance	Low Medium Medium High High High
16 - 23	No Public Safety Factors Disruptive Group Prison Disturbance Sentence Length Time remaining > 30 Yrs (Includes non-parolable LIFE and Death penalty cases)	Medium High High High
24 +		High

OFFENSE SEVERITY SCALE

GREATEST SEVERITY

Aircraft Piracy - placing plane or passengers in danger
Arson - substantial risk of death or bodily injury
Assault - serious bodily injury intended or permanent or life threatening bodily injury resulting)
Car Jacking - any
Drug Offense - see criteria below*
Escape - closed institution, secure custody, force or weapons used
Espionage - treason, sabotage, or related offenses
Explosives - risk of death or bodily injury
Extortion - weapon or threat of violence
Homicide or Voluntary Manslaughter - any
Kidnaping - abduction, unlawful restraint, demanding or receiving ransom money
Robbery - any
Sexual offenses - rape, sodomy, incest, carnal knowledge, transportation with coercion or force for commercial purposes
Toxic Substances/Chemicals: - weapon to endanger human life
Weapons - distribution of automatic weapons, exporting sophisticated weaponry, brandishing or threatening use of a weapon

* Any **drug offender** whose current offense includes the following criteria will be scored in the Greatest severity category:

The offender was part of an organizational network and he or she organized or maintained ownership interest/profits from **large-scale** drug activity,

AND

The drug amount equals or exceeds the amount below:

Cocaine - greater than or equal to 10,000 gm, 10 K, or 22 lb
Cocaine Base "Crack" - greater than or equal to 31 gm
Hashish - greater than or equal to 250,000 gm, 250 K, or 551 lb
Marijuana - greater than or equal to 620,000 gm, 620 K, or 1,367 lb
PCP - greater than or equal to 100,000 mg, 100 gm, or 20,000 dosage units
Heroin or Opiates - greater than or equal to 2,000 gm, 2 K, or 4.4 lb
Methamphetamine - greater than or equal to 16,000 gm, 17 K, or 35 lbs
Other illicit drugs: - Amphetamine, Barbiturates, LSD, etc. greater than or equal to 250,000 dosage units

HIGH SEVERITY

Arson - other

Cruelty to Children - any

Drugs (For Females only)

Cocaine - greater than or equal to 10,000 gm, 10 K,
Or 22 lb

Cocaine Base "Crack" - greater than or equal to 31 gm

Hashish - greater than or equal to 250,000 gm, 250 K,
Or 551 lb

Marijuana - greater than or equal to 620,000 gm, 620 K,
Or 1,367 lb

PCP - greater than or equal to 100,000 mg, 100 gm, or
20,000 dosage units

Heroin or Opiates - greater than or equal to 2,000 gm,
2 K, or 4.4 lb

Methamphetamine - greater than or equal to 16,000 gm,
17 K, or 35 lb

Other illicit drugs - Amphetamine, Barbiturates, LSD
etc. - greater than or equal to 250,000 dosage units

Explosives - other

Extortion - other

Involuntary manslaughter - includes vehicular homicide

Residential Burglary - with evidence that occupants were in
dwelling during the commission of the offense

Rioting - any

Sexual Offenses - sexual exploitation of children, unlawful
sexual conduct with a minor, pornography

Stalking - any

Threatening Communications - with conduct evidencing intent to
carry out such threat

Toxic Substances/Chemicals - other

MODERATE SEVERITY

Assault - other
Auto Theft - any
Breaking and Entering - any
Burglary - other
Child Abandonment - any
Contempt of Court - criminal contempt
Drugs Cocaine - greater than or equal to 400 gm, .4 K, or .88 lb
 Cocaine Base "Crack" - greater than or equal to 1 gm
 Hashish - greater than or equal to 11,000 gm, 11 K, or 24 lb
 Marijuana - greater than or equal to 25,000 gm, 25 K, or 55 lb
 PCP - greater than or equal to 4,000 mg, 4 gm, or .14 oz
 Heroin or Opiates - greater than or equal to 80 gm, .08 K, or .18 lb
 Methamphetamine - greater than or equal to 667 gm, .67 K, or 1.47 lb
 Other illicit drugs - Amphetamine, Barbiturates, LSD, etc. greater than or equal to 10,000 dosage units, .05 K, or .11 lb
Escape - walkaway from open institution, failure to appear/bail reform act, no threat of violence involved
Immigration Offenses - transportation of unlawful aliens
Obstruction of Justice - any
Property Offenses - over \$250,000, includes theft, fraud, tax evasion, forgery, currency offenses
Sexual Offenses - other
Weapons - other

LOW-MODERATE SEVERITY

Bigamy - Polygamy
Drugs Cocaine - less than 400 gm, .4 K, or .88 lb
 Cocaine Base "Crack" - less than 1 gm
 Hashish - less than 11,000 gm, 11 K, or 24 lb
 Marijuana - less than 25,000 gm, 25 K, or 55 lb
 PCP - less than 4,000 mg, 4 gm, or .14 oz
 Heroin or Opiates - less than 80 gm, .08 K, or .18 lb
 Methamphetamine - less than 667 gm, .67 K, or 1.47 lb
 Other illicit drugs - Amphetamine, Barbiturates, LSD, etc., less than 10,000 dosage units, .05 K, or .11 lb
Indecent Exposure - indecent acts, lewd behavior
Immigration Offenses - other
Post-Release Supervision Violation - technical, administrative
Property Offenses - valued between \$2,000 and \$250,000)

LOWEST SEVERITY
Drugs - personal use Gambling Law Violation - any Liquor Law Violation - any Property Offenses - less than \$2,000 Suspicion - any Traffic Laws - any Vagrancy - any Vandalism - any

MARIJUANA EQUIVALENT CHART	
DRUG	MARIJUANA EQUIVALENT
1 gm of Heroin	1000 gm
1 gm of Cocaine Powder	200 gm
1 gm of Methamphetamine	2000 gm
1 gm of LSD	100,000 gm
1 gm of "crack" cocaine	20,000 gm
1 gm of Hashish Oil	50 gm
For other drug equivalents, please refer to the U.S. Sentencing Commission Guidelines Manual.	

MEASUREMENT CONVERSION TABLE	
1 oz = 28.35 gm 1 lb = 453.6 gm 1 lb = 0.4536 kg 1 gal = 3.785 liters 1 qt = 0.946 liters	1 gm = 1 ml (liquid) 1 liter = 1,000 ml 1 kg = 1,000 gm 1 gm = 1,000 mg 1 grain = 64.8 mg

DEFINITION OF ROLES INVOLVED IN DRUG OFFENSES

To determine whether an individual involved with a drug offense rose to the level of an organizer or leader, read the "Offense Conduct" section of the Presentence Investigation Report, and any other available information (i.e., Statement of Reasons, U.S. Attorney Report, etc.) to determine what the individual's role was in the criminal activity. The role definitions below are grouped into two categories: Those that rise to the level of organizer/leader; and, those that do not.

ORGANIZER/LEADER

Importer/High-Level Supplier: imports or otherwise supplies large quantities of drugs; is at or near the top of the distribution chain; has ownership interest in drugs (not merely transporting drugs for another individual); usually supplies drugs to other drug distributors and does not deal in retail amounts; may employ no or very few subordinates.

Organizer/Leader: organizes, leads, directs, or otherwise runs a drug distribution organization. Receives the largest share of the profits and has the greatest decision-making authority.

Grower/Manufacturer: grows, cultivates, or manufactures a controlled substance, and is the principal owner of the drugs. (Keep in mind, the intent of this definition is to capture the individual who has the capability to manufacture enormous amounts of drugs in his garage/lab for example, and not the individual who is growing only five marijuana plants in his basement.)

Financier/Money Launderer: provides money for purchase, importation, manufacture, cultivation, transportation, or distribution of drugs; launders proceeds of drug sales or purchases.

Aircraft Pilot/Vessel Captain: pilots vessel or aircraft; requires special skill; does not include inmate who is the only participant directing a small boat (i.e., a speed boat) onto which drugs had been loaded from a "mother ship" (such person is a courier).

NOT A DRUG ORGANIZER/LEADER

Manager: serves as a lieutenant to assist one of the above; manages all or a significant portion of the manufacturing, importation, or distribution operation; takes instructions from one of the above and conveys to subordinates; directly supervises at least one other co-participant in an organization of at least five co-participants.

Bodyguard/Strongman/Debt Collector: provides physical and personal security for another co-participant in the offense; collects debts owed, or punishes recalcitrant persons.

Chemists/Cooks/Chemical Supplier: produces LSD, methamphetamine, crack cocaine, or other illegal drugs, but does not qualify as a Grower/Manufacturer because he/she is not the principal owner of the drugs. Chemical supplier does not handle drugs themselves but engages in the unlawful diversion, sale, or furnishing of listed chemicals or equipment used in the synthesis or manufacturing of controlled substances.

Supervisor: supervises at least one other co-participant, however, has limited authority and does not qualify as a Manager.

Street-Level Dealer: distributes retail quantities directly to the user.

Broker/Steerer/Go-Between: arranges for two parties to buy/sell drugs, or directs potential buyer to a potential seller.

Courier: transports or carries drugs with the assistance of a vehicle or other equipment. Includes situations where individual, who is otherwise considered to be a crew member, is the only participant directing a vessel (e.g., a speed boat) onto which drugs had been loaded from a "mother ship".

Mule: transports or carries drugs internally or on their person, often by airplane, or by walking across a border. Also includes an individual who only transports or carries drugs in baggage, souvenirs, clothing, or otherwise.

Renter/Storer: provides (for profit/compensation) own residence, structures (barns, storage bins, buildings), land, or equipment for use to further the offense. This inmate is distinguished from the enabler because he/she is paid (in some way) for his/her services.

Money runner: transports/carries money and/or drugs to and from the street-level dealer.

Off-loader/Loader: performs the physical labor required to put large quantities of drugs into storage, hiding, or onto some mode of transportation.

Gopher/Lookout/Deckhand/Worker/Employee: performs very limited, low-level function in the offense (whether or not ongoing); includes running errands, answering the telephone, receiving packages, packaging the drugs, manual labor, acting as lookout to provide early warnings during meetings, exchanges, or off-loading, or acting as deckhand/crew member on vessel or aircraft used to transport large quantities of drugs.

Enabler (Passive): plays no more than a passive role in the offense, knowingly permitting a certain unlawful criminal activity to take place without actually being involved with the activity; may be coerced or unduly influenced to play such a function (e.g., a parent or grandparent threatened with displacement from a home unless they permit the activity to take place), or may do so as "a favor" (without compensation).

User Only: possessed small amount of drugs apparently for personal use only; no apparent function in any conspiratorial criminal activity.

Wholesaler: sells more than retail/user-level quantities (greater than one ounce) in a single transaction.

UNITED STATES PROBATION OFFICE
EASTERN DISTRICT OF NORTH CAROLINA

James L. Corpening, Jr.
Chief U.S. Probation Officer



Phone: _____
Fax: _____

AUTHORIZATION TO RELEASE CONFIDENTIAL INFORMATION

Name: _____ PACTS #: _____
SS#: _____ Date of Birth: _____ Race/Sex: / _____
Address: _____
Other Names including Maiden Name: _____ Mother's Maiden Name: _____

This documentation is to serve as my request for information as provided by the FREEDOM OF INFORMATION ACT and release of information as required by the PRIVACY ACT OF 1974 and the FINANCIAL PRIVACY ACT of 1978. Having been convicted in the U.S. District Court, in accordance with Rule 32(d)(2)(A) through (G) of the Federal Rules of Criminal Procedure and 18 U.S.C. § 3664(D)(3), by my signature below, I hereby authorize release to the United States Probation Office those confidential records and information pertaining to me for the purpose of assisting with court proceedings as designated below by my initials (items not initialed are considered surplusage) :

_____ Educational records and information contained in permanent school records pursuant to the provisions of 34 CFR § 99 ~~excepting disciplinary records, or~~
(state name of institution) _____ ~~records regarding suspension/~~
(state date(s) of graduation or attendance) _____ ~~expulsion.~~

Medical records of a **physical health nature**, including (state nature of information) _____
as administered by (state name/institution holding records) _____
☒ between the dates of _____ and _____ pursuant to the provisions of 5 U.S.C. § 552a, 20 CFR § 401 and 42 CFR § 2.

Medical records of a **psychological/psychiatric nature**, including (state nature of information) _____
as administered by (state name/institution holding records) _____
☒ between the dates of _____ and _____ pursuant to the provisions of 5 U.S.C. § 552a, 20 CFR § 401 and 42 CFR § 2.

Medical records of a **alcohol/drug treatment nature**, including (state nature of information) _____
as administered by (state name/institution holding records) _____
between the dates of _____ and _____ pursuant to the provisions of 5 U.S.C. § 552a, 20 CFR § 401 and 42 CFR § 2.

_____ Employment records including but not limited to dates of employment, salary and compensation, ~~work performance and reason for termination.~~

_____ All government (federal, state and local) information to include military service records, birth/marriage/divorce records, child support records, and immigration and naturalization records. ~~I also authorize the Social Security Administration to release all employment earnings and income information related to me as well as any benefit/disability information.~~

_____ Financial records including but not limited to charge accounts, loans, bank accounts, securities, real estate, life insurance, motor vehicles, lines of credit (including credit bureau reports), trusts and any other assets or liabilities in which I have interest.

APPLICABLE TO ALL RECORD AUTHORIZATIONS: Original authorizations, or copies, will remain in force for a period not to exceed one (1) year from the date of my signature below. I understand that I may revoke the authorization of release of records at any time. Revocation of this authorization requires a written request submitted by me to the individual/institution holding/disseminating records. I understand that any action taken on this authorization prior to the rescinded date is legal and binding and that this document releases all participants from liability in the product or release of information. I understand that once the information is disclosed, it may be re-disclosed by the recipient and federal and/or state privacy laws may not protect the re-disclosure. I also understand that the health information may include that which relates to sexually transmitted diseases, AIDS, HIV, mental health services, and/or treatment for alcohol and drug abuse. Signature of Person Authorizing

NOTE: The individual authorizing disclosure of information permits the use of photostatic and tele-faxed copies of this release in lieu of the original. The U.S. Probation Office is not able to provide reimbursement for photocopies submitted by agencies in response to any requests for information.

Signature of Person Authorizing Disclosure (and relationship if not the subject of records)

Date

Witness / United States Probation Officer

Date

Program Name	Type of Program	County/City	Contact Information	Important information related to admission
Healing Place	Substance use orcearam/residential	Wilmington	Jared Cash (men's program): jared.cash@hpcnc.org Phone: (910) 970-4673	Client doesn't need to have active insurances; 6-8 month lone-term residential orcearam
Healing Transitions	Substance use program/residential	Raleigh	Richard (admissions): 919-838-9800 ext: 126	Unclear if client needs to be resident of Raleigh in order to be admitted/need to say "homeless in Wake County"
CRCI Recovery	Substance use program (men, women, and children)	Ash	Phone: 910-287-4337 or admissions@crcirecovery.org	
Malachi House	Substance use program (clients have to work)	Greensboro	336-376-0900	
Troa	Substance use program; residential	Durham	919-220-6119	Can't have any open cases
PORT Health	Outpatient mental health treatment	Various locations	https://www.porthealth.org/	
Behavioral Health Group	Outpatient Substance Use with	Elizabeth City, NC	252-333-1540	Accept maior insurance (deopend on statel and national commercial insurance
Methodone Treatment Center	Medication assistance treatment		http://www.methodoneoutpatientcenter.org	
A Ray of Sunshine	Outpatient substance use treatment and aftercare	Greenville and Raleigh	http://www.methodoneoutpatientcenter.org	
	Substance Abuse Counseling	Greenville	252-413-0401 or 252-725-1186	
Dixon Social Intercative Services	Outpatient services; Substance Abuse, Sex offender treatment, support) for adults, couples, children.	Greenville	252-353-0100	
The Village	Residential substance use for women with various level of care	Winterville	800-889-0945	
Holly Hill Hospital	Acute substance use and mental health stabilization	Raleigh	919-250-7000 or 919-250-7600	
Fellowship Health Resource	Outpatient and intensive Outpatient substance use and mental health treatment	Raleigh	919-573-6520	
Troa	2 year Residential Treatment for substance use disorder (men and women)	Durham	919-415-1059 or email admissions@troasinc.org	
Green Hill	Transitional living and outpatient treatment for substance use and mental health treatment	Raleigh	984-204-1106	
New Season	Outpatient Opioid Treatment	Durham and Fayetteville	Durham: 919-386-1509 Fayetteville: 910-483-0958	
New Waters Recovery	Substance use detox and treatment, mental health assessment	Raleigh	984-203-7955	
Residential Treatment Services of Alamance, INC	Substance Use, Alcoholism, and Mental health treatment (men and women)	Burlington	336-227-7417	
First Steps Services	Addiction treatment for outpatients Inpatient and Outpatient	Raleigh and Cary	Raleieh: 919-833-8899; Carv: 919-651-8349	
Crest View Recovery Center	Residential and outpatient substance use and mental health treatment	Asheville	866-986-1371	
Wilmington Treatment Center	Residential Substance Use, Military Treatment, Medication Assistance, Detox, Outpatient Treatment	Wilmington	Ask for admissions counselor	
Monarch	Behavioral Health, Residential treatment options	Rocky Mount	252-442-0333	
Black Mountain	Substance Abuse Treatment (women) residential	Swannanoa	828-581-4231	Cannot have Schizophrenia or a chronic or active untreated Psychotic Disorder. Cannot have a chronic history of assaultive or violent behaviors. No pending charges/ court dates
Daymark Recovery Services	Substance Uses (outpatient)	Chatham County, Silver City	919-663-2955	
Freedom House Recovery Center	Substance Use for children, adolescents, and adults	Pittsboro and Chapel Hill	Chapel Hill: 919-942-2803; Pittsboro: 919-542-4422	
Brunswick Christian Recovery Center	Residential substance use treatment/Faith based orcearam	Ash	Phone: 888-311-3043	

Mitigation Specialist Contact Information for Eastern District of North Carolina

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