IN THE CIRCUIT COURT OF COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

v. CASE NO.:

 ,

 Defendant.

DEFENDANT’S OBJECTION TO PRESENTENCE REPORT

 Pursuant to Rule 32(b)(6)(B) of the West Virginia Rules of Criminal Procedure, W. Va. R. Cr. P. 32(b)(6)(B), the defendant objects to the presentence report in this matter for the reason that it omits an ACES assessment. The Court is asked to sustain the objection and include an ACES assessment in the presentence report for the following reasons:

1. Rule 32(b)(4)(A) of the West Virginia Rules of Criminal Procedure, W. Va. R. Cr. P. 32(b)(4)(A), provides that “the presentence report must contain: information about the defendant’s *history* and characteristics, including information concerning the defendant’s *family background*, … mental and physical condition, … and *any circumstances that, because they affect the defendant’s behavior,* may be helpful in imposing sentence….” [emphasis added].
2. The ACES assessment, based upon a defendant’s *history* before the age of 18 years, provides a tool to understand a defendant’s *behavior* as an adult, providing insight into the potential need for treatment rather than, or in combination with, punishment.
3. Specifically, the ACES assessment provides a measure of the trauma that occurred in a child’s life through the identification of, and accumulation of, adverse childhood experiences.
4. The ACES assessment was built upon “one of the largest investigations of childhood abuse and neglect and later-life health and well-being” conducted by a partnership between the Center for Disease Control (“CDC”) and Kaiser-Permanente. *About the CDC-Kaiser ACE Study,* Centers for Disease Control and Prevention, <https://www.cdc.gov/violenceprevention/acestudy/about.html>).
5. The “Adverse Childhood Experiences Study” (“ACES”) involved over 17,000 participants who provided “information on adverse childhood experiences – related to abuse (emotional, physical, and sexual), neglect (emotional and physical), and household dysfunction (a battered mother, parental abandonment, or the experience of having had a substance-abusing, mentally ill, or incarcerated member in the household).” Reavis, et al., *Adverse Childhood Experiences and Adult Criminality: How Long Must We Live Before We Possess Our Own Lives?* Perm. J. 2013 Spring, 17(2): 44-48.
6. The study established a correlation between the number of adverse childhood experiences and the development of depression, suicide, alcoholism, drug abuse, obesity, heart disease, cancer, stroke, diabetes and other health risks and diseases. *Id.*
7. Compared to persons with no adverse childhood experiences, “[s]ubjects with 4 or more negative childhood events were also nearly 5 times more likely to have suffered a depressive episode in the preceding 12 months, twice as likely to smoke cigarettes, more than 7 times as likely to consider themselves an ‘alcoholic,’ and 12 times as likely to have attempted suicide.” *Id.*
8. Disturbingly, the subjects with 6 adverse childhood experiences were “46 times more likely to report intravenous drug use.” *Id.*
9. As summarized in the *Findings on Adverse Childhood Experiences (ACEs) in West Virginia* prepared by theAdverse Childhood Experiences Coalition of West Virginia in January, 2018:

ACE scores have also been shown to correlate with poor academic performance, dropping out of high school, self-mutilation, persistent post-traumatic stress disorder, drug and alcohol abuse, increased risk for abuse in subsequent relationships, difficulty in forming meaningful and trusting relationships, cognitive deficits, depression, dissociative symptoms, and suicide.

*Id.* citing Felitti, V.J.; Anda, R.F.; Nordenberg, D.; Williamson, D.; Spitz, A.M.; Edwards, V.; Koss, M.; Marks, J.S. (1998), *Relationship of childhood abuse and household function to many of the leading causes of death in adults: The Adverse Childhood Experience (ACE) Study,* American Journal of Preventive Medicine 14(4).

1. The referenced findings of the Adverse Childhood Experiences Coalition of West Virginia include the statement that “there is strong evidence of the correlation between opioid addiction and traumatic experiences, particularly early childhood adversity.” *Id.*
2. Additional findings were that “individuals who reported 5 or more ACES were 3x more likely to misuse prescription pain medication and five times more likely to engage in injection drug use.” *Id.*
3. Particularly relevant to the defendant in this matter, adverse childhood experiences have been correlated with adverse adult criminal justice experiences.
4. One study found that men convicted of violent offenses were four times more likely than the average adult male to have 4 or more adverse childhood experiences. Reavis, et al., *supra.*
5. The overriding conclusion is that trauma, experienced early in life, “influences brain functioning,” effectively rewiring the brain. Reavis, et al., *supra.*
6. Individuals whose brains have been rewired through adverse experiences require neurological treatment that will help to restore the brain to functioning that is not controlled by what happened in their past. Reavis, et al., *supra.*
7. An injustice results when the criminal justice system ignores the existence of these environmental factors and believes that behaviors that reflect a neurological issue can be modified by punishment solely.
8. Defendant’s counsel has received training on the administration of the ACES assessment tool; specifically, .
9. Defendant’s results were that defendant has adverse childhood experiences.
10. Based on these experiences, the defendant’s disposition requires a consideration of the underlying neurological issues that have contributed to the offending behavior and mandates a disposition that incorporates treatment of these issues through therapy or otherwise.

 For these reasons, the defendant objects to the omission of the ACES assessment from the presentence report because, consistently with the provisions of Rule 32(b)(4)(A), the ACES assessment provides relevant and compelling information regarding the defendant’s history, family background, mental and physical condition, and circumstances that contribute to the defendant’s behavior.

 Respectfully submitted,

By counsel