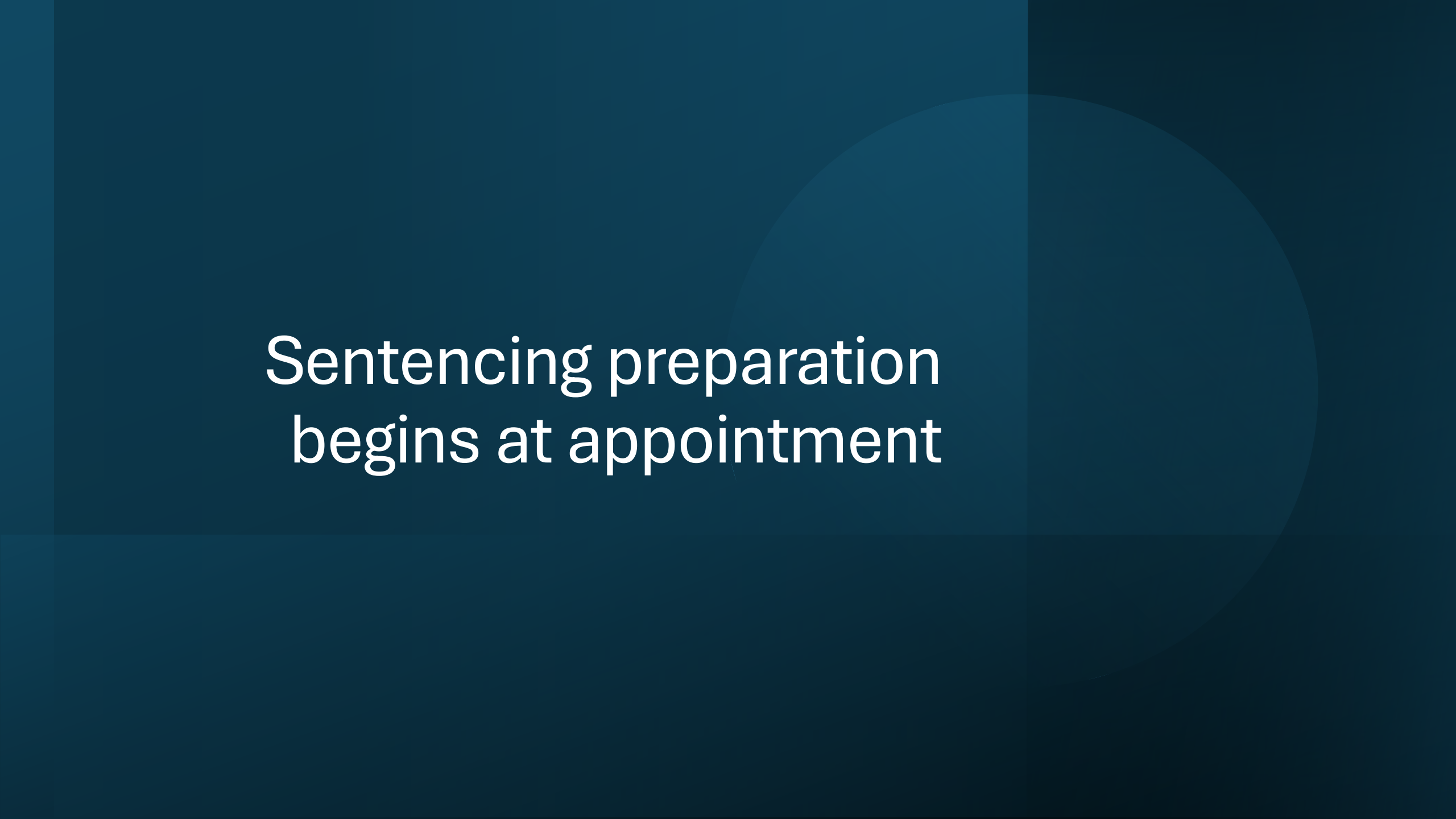


Sentencing:

From Appointment to Parole



Sentencing preparation
begins at appointment

Virtually all criminal cases result in plea agreements

Studies by the Pew Research Center show of nearly 80,000 defendants who faced charges in the federal system in fiscal year 2018, fewer than 2% went to trial and only 320 of those that did win an acquittal. Eight percent of the cases were dismissed, and the other 90% were resolved through guilty pleas

John Gramlich, Only 2% Of Federal Criminal Defendants Go To Trial, And Most Who Do Are Found Guilty. The Pew Research Center, June 11, 2019

In 2012, the US Supreme Court noted that “Ninety-seven percent of federal convictions and ninety-four percent of state convictions are the result of guilty pleas[.]”

Laffer v. Cooper 132 S.Ct. 1376, (2012)



A study of DNA exonerations conducted by the Innocence Project found that 11% of exonerated individuals had pleaded guilty.

Glinda S. Cooper, Vanessa Meterok & Prahelika Gadtaula, *Innocents Who Plead Guilty: An Analysis of Patterns in DNA Exoneration Cases*, 31 Fed. Sent. R. 215, 234 (2019).

West Virginia Division of Juvenile Services

Race & Gender Report as of 6/2/2026

Run Date: 6/2/2026

Run Time: 07:08

Page 1 of 1

Race	Female	Male	Total
Asian	0	1	1
Black Hispanic	0	2	2
Black Non-Hispanic	10	43	53
Other	0	5	5
Other - Hispanic	0	2	2
White Hispanic	5	7	12
White Non-Hispanic	65	183	248
Total	80	243	323

Facility	Totals				Grand Totals	Capacity
Age	Under 18		Over 18			
	Female	Male	Female	Male		
Donald R. Kuhn Juvenile Center	16	14	8	10	48	46
Gene Spadaro Juvenile Center	10	14	1	1	26	23
J.M. "Chick" Buckbee Juvenile Center	0	19	0	6	25	24
James H. "Tiger" Morton Juvenile Center	9	17	2	5	33	23
Kenneth "Honey" Rubenstein Juvenile Center	0	30	0	24	54	66
Lorrie Yeager Jr. Juvenile Center	8	23	0	2	33	24
Robert L. Shell Juvenile Center	15	23	0	0	38	23
Ronald C. Mulholland Juvenile Center	1	21	0	1	23	25
Sam Perdue Juvenile Center	0	7	0	12	19	20
Vicki V. Douglas Juvenile Center	10	13	0	1	24	23
Total	69	181	11	62	323	297

YRC COUNTS		Aftercare	
Facility	Enrolled	TOTAL	133
Brook/Hancock County Youth Report Center	29		
Boone/Logan Youth Report Center	31		
Cabell County Youth Report Center	31		
Fayette County Youth Reporting Center	20		
Greenbrier Youth Reporting Center	20		
Harrison County Youth Report Center	23		
Jefferson County Youth Report Center	12		
Kanawha County Youth Report Center	22		
Lincoln County Youth Report Center	13		
Marion County Youth Report Center	32		
Mason/Jackson County Youth Reporting Center	5		
Mercer County Youth Report Center	13		
Monongalia Youth Reporting Center	8		
Ohio/Marshall Youth Reporting Center	5		
Pocahontas County Youth Reporting Center	10		
Putnam County Youth Report Center	32		
Raleigh County Youth Reporting Center	18		
Randolph County YRC	39		
STARS Youth Report Center	13		
Wood County Youth Report Center	24		
Wetzel-Tyler Northern Community Intervention Program	20		
TOTAL	420		

West Virginia Division of Corrections and Rehabilitation - Adult Inmate Count

Run Date: 6/2/2026

Run Time: 07:10

Bureau of Prisons and Jails - Jails

Facility	CF Convicted Felon		CM Convicted Misdemeanor		DOC Division of Corrections Inmate		FP Federal Inmate Pretrial		FS Federal Inmate Sentenced		PTF Pretrial Felon		PTM Pretrial Misdemeanor		Total		Grand Total	Capacity
	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male		
CRJ	7	28	5	14	18	60	0	0	6	1	26	121	23	42	85	266	351	312
ERJ	10	28	5	20	7	72	11	58	0	0	25	142	10	39	68	359	427	448
NCRJ	19	124	16	46	14	77	1	18	0	0	67	309	20	70	137	644	781	564
NRJ	4	19	2	7	7	67	3	7	0	0	28	129	11	33	55	262	317	289
PHRJ	4	29	3	5	1	89	0	1	0	0	9	61	8	11	25	196	221	312
SCRJ	7	41	2	14	9	121	0	36	2	2	24	193	16	50	60	457	517	460
SRJ	14	32	2	18	14	101	0	16	0	0	50	234	10	38	90	439	529	468
SWRJ	9	39	5	21	8	116	0	0	0	1	30	139	11	34	63	350	413	468
TVRJ	10	37	3	36	24	82	4	6	0	1	23	123	10	31	74	316	390	368
WRJ	11	46	1	17	8	178	0	8	0	0	33	214	10	33	63	496	559	576
Total	95	423	44	198	110	963	19	150	8	5	315	1665	129	381	720	3785	4505	4265

West Virginia Division of Corrections and Rehabilitation - Adult Inmate Count

Run Date: 6/2/2026

Run Time: 07:10

Bureau of Prisons and Jails- Prisons

Facility	Active Inmate		Out To Court	Out to Court Other State		Out to Medical Emergency		Out to Medical	Work Release Out to Work	Total		Grand Total	Capacity
	Female	Male	Male	Female	Male	Female	Male	Male	Male	Female	Male		
DCC	0	205	0	0	0	0	0	0	0	0	205	205	240
HCC	0	1098	1	0	2	0	2	0	0	0	1103	1103	1141
HWC	0	13	0	0	0	0	0	0	18	0	31	31	52
LCC	523	0	0	1	0	1	0	0	0	525	0	525	607
MCC	0	20	0	0	0	0	0	0	0	0	20	20	120
MOCC	0	926	0	0	0	0	2	1	0	0	929	929	1013
NCC	0	243	0	0	0	0	0	0	0	0	243	243	253
OCCC	0	51	0	0	0	0	0	0	1	0	52	52	66
PCC	0	346	0	0	0	0	0	0	0	0	346	346	369
SCC	0	430	0	0	1	0	0	0	0	0	431	431	467
SMCC	0	680	0	0	1	0	2	2	0	0	685	685	700
STCC	0	332	0	0	0	0	0	0	0	0	332	332	332
SWC	0	6	1	0	0	0	0	0	0	0	7	7	8
Total	523	4350	2	1	4	1	6	3	19	525	4384	4909	5368

West Virginia Division of Corrections and Rehabilitation - Adult Inmate Count

Bureau of Community Corrections

Facility	Active Inmate		Active-in Inmate	Out To Court	Out to Medical Planned	Work Release Furlough	Work Release Out to Work		Total		Grand Total	Capacity
	Female	Male	Male	Male	Male	Male	Female	Male	Female	Male		
BCC	0	50	0	1	0	0	0	15	0	66	66	109
CCC	29	43	0	0	0	0	13	20	42	63	105	128
PBCC	0	155	1	0	2	1	0	21	0	180	180	280
Total	29	248	1	1	2	1	13	56	42	309	351	517

All Offenders by Race & Gender as of 6/2/2026

Race	Female	Male	Total
American Indian/Alaska Native	0	2	2
Asian	0	10	10
Black	103	1332	1435
Hispanic or Latino	5	109	114
Multi-Racial or Other	5	70	75
Native Hawaiian or Pacific Islander	0	2	2
Unspecified	0	1	1
White	1174	6952	8126
Total	1287	8478	9765

Parolees

Total
2849

DOC Available for Transfer Jail Backlog as of 6/2/2026

Booking Type	In Jail Available for Transfer		
	Female	Male	Total
*Regular	20	510	530
Anthony Center	0	3	3
Community Corrections Rev	2	5	7
Home Confinement Parole Revoked	0	5	5
Home Confinement Revoked	0	17	17
ICOTS	0	1	1
Probation Violator Felony	0	2	2
Probation Violator Technical	5	89	94
Revocation of Supervised Release	1	50	51
Total	28	682	710

DOC Unavailable for Transfer Jail Backlog as of 6/2/2026

Booking Type	In Jail Unavailable For Transfer			Total
	Female	Male	Total	Total
*Regular	38	191	229	229
Community Corrections Rev	0	1	1	1
Diagnostic	0	2	2	2
Home Confinement Parole Revoked	1	1	2	2
Home Confinement Revoked	1	6	7	7
ICOTS	8	28	36	36
Probation Violator Felony	0	4	4	4
Probation Violator Technical	16	45	61	61
Revocation of Supervised Release	0	7	7	7
Total	64	285	349	349

Between arrest and plea/trial

What to do with the cases that you will “get to when things slow down.”



Begin to work with your client to set them up for success:



Identify barriers and refer to service providers in the community

substance use disorder
mental health
employment
food scarcity
daycare



Plan next steps:

restitution
Treatment
therapy
gather information or records

Client
interview-
explain why
we need the
information

We must explain to
the court:

- Why you did what you did
- How we can ensure it won't happen again

Topics for interview

Early childhood and youth

Family dynamics

Residential history

Education

Friends and group dynamics

Substance abuse history

Medical and mental health

Personal relationships

Areas of support

Financial history

Work history

Mitigation: its not just a buzzword

Important for:

- bond arguments
- Plea negotiations
- Interviews with witnesses
- Letters in support of sentencing
- Helping the client prepare for allocution
- Possible motions in support of sentence/ sentencing memorandums

Ineffective assistance:

In the determination of a claim that an accused was prejudiced by ineffective assistance of counsel violative of Article III, Section 14 of the West Virginia Constitution and the Sixth Amendment to the United States Constitution, courts should measure and compare the questioned counsel's performance by whether he exhibited the normal and customary degree of skill possessed by attorneys who are reasonably knowledgeable of criminal law..." Syllabus Point 19, *State v. Thomas*, 157 W.Va. 640, 203 S.E.2d 445 (1974).

Murder defendant's counsel was ineffective for failure to introduce available mitigation evidence. *Schofield v. W. Virginia Dep't of Corr.*, 185 W. Va. 199, 406 S.E.2d 425 (1991)



Mitigation
information



What to get



Where to get it



What to do with
it

Records to ask client or client's family for

- Medical
 - Prenatal or birth
 - Pediatric
 - Emergency room
 - Illness/injury
- Mental Health
 - Evaluations
 - Treatment history
- Education
 - Report cards or transcripts
 - Attendance records
 - Diplomas
 - Disciplinary records
 - Individualized Education Program (IEPs)
 - Psychosocial Evaluations
- Employment
 - Pay stubs
 - Training certificates
 - Raise or promotion
 - Letter from employer
 - Unemployment
- Recreation / Sports / Community Involvement
 - Awards
 - Certificates
 - Rosters
 - Lesson history
- Public Benefits
 - Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI)
 - Supplemental Nutrition Assistance Program (SNAP)
- Photos, text messages, emails

Negative	Positive
☐ Client as Victim: • Child Abuse/Maltreatment • Childhood Neglect • Parental chaos (i.e., substance use, mental illness) • Witness to violence/abuse • Familial loss/death • Victim of Intimate Partner Violence • Victim of bullying/violence • Experiences of institutionalization • Experiences of bias, discrimination, oppression ☐ Client Struggles with Substance Use Disorder: • Age of first use • History of use • Most recent pattern of use (amt./frequency/route of admin.) • Prior efforts to stop • Medical consequences of use ☐ Client Contends with Mental or Cognitive Disorder • Prenatal/birth complications- maternal health • Neurodevelopmental impairment • Age of onset of symptoms • Specialized services received in school/community • Impact to relationships ☐ Client has Limited Resources/Access • Poverty • Under resourced community (urban or rural) • Limited education • Intergenerational trauma • Adultified minor • Experiences of racism/structural barriers • Missed opportunities for intervention ☐ Client Experienced Acute Disturbance • Recent trauma • Severe and active substance dependence • Change in medications • Extreme emotional state • Recent diagnosis/life stressor ☐ Adverse Childhood Experiences	☐ Client Has Good Roots: • Caregiver consistency • Adequate structure in home • Positive role models • Stability • Accepted by loved ones • Received affection and care ☐ Client has Community: • Active familial support • Friends and loving relationships • A steady home • Client is a positive influence for others (i.e., children, family, mentees) • Client is involved with Church, community orgs, schools, volunteerism • Professional community (i.e., military, civil service) • Letters of support ☐ Client has Solid Prospects for Rehabilitation • Engages with treatment program • Age, youth and plasticity of brain • Previous record of compliance • Strong support network ☐ Client is Remorseful: • Evidence for remorse in words and actions • Prepared statements of remorse • Willingness to make amends • Symptoms of distress since incident (suicidality, sleeplessness, behavior change) ☐ Client has Little/No Criminal History: • First time offender • No history of violent offense • Offenses related to substance dependence • Surprise by loved ones (i.e., action was "out of character") ☐ Client Has Plans for the Future: • Dreams of education • Plans for job/training • Hobbies and pastimes • Desire for family • Demonstrated effort to improve future (i.e. education/programs while detained). ☐ Good character

Sentencing memos

What is a sentencing memo and why write one?

Prep work

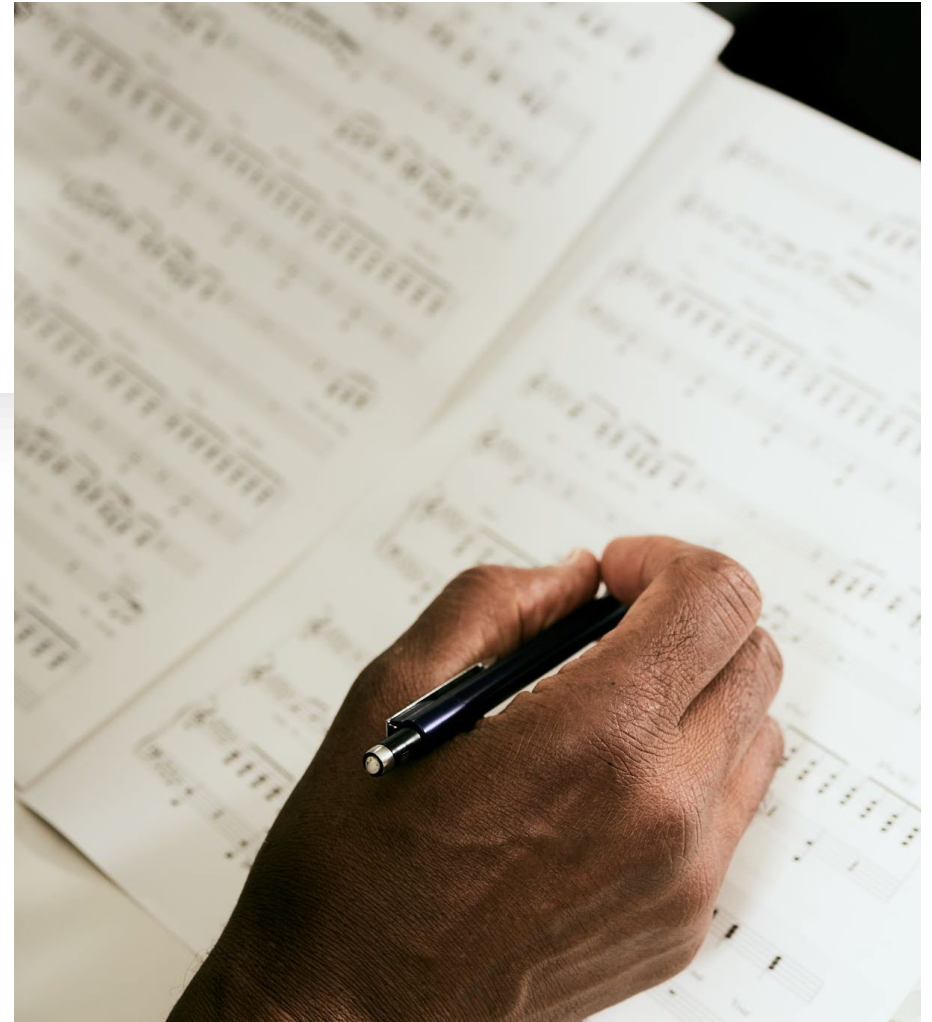
How to synthesize the information you've collected

Formatting

What is it, and should I prepare one?

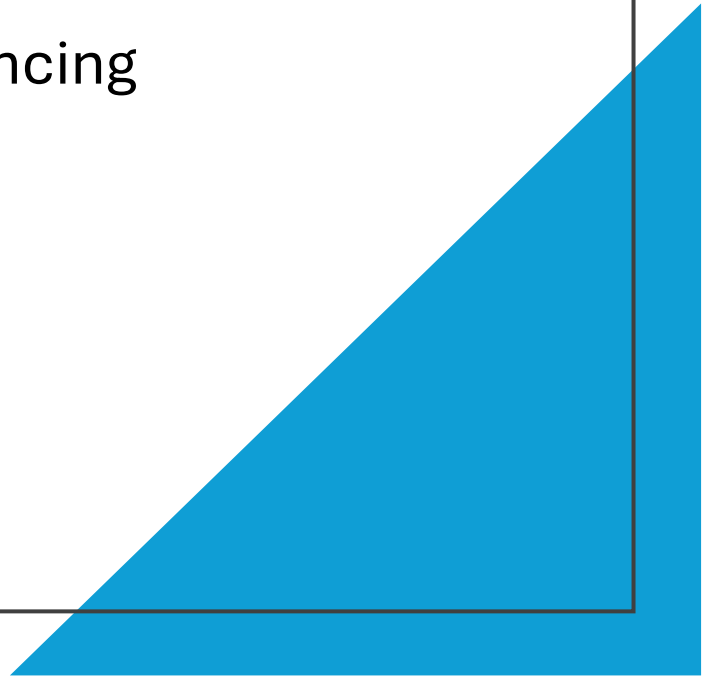
A sentencing memo is a pleading submitted in an effort to present a more complete picture of the defendant than the crime itself

Before writing, ask yourself: do I need to file one in this case?



Prep work

- Organize mitigation information gathered
- Review discovery and case materials in light of sentencing
- Pull from PSI
- Gather character letters
- Obtain expert reports
- Look for other resources



Discovery and PSI

Who are the other actors

What part did they play

When did the conduct take place

Where did the conduct take place

How will the government portray your client

Criminal Record

Any other background information

Victim impact statement

Mitigating factors to consider

- Defendant under duress, coercion, threat or compulsion
- Passive participant/minor role
- Suffering mental or physical condition/emergency
- Age, immaturity, mental capacity
- Acknowledged wrongdoing early in the process
- Defendant has made restitution
- Cooperated with law enforcement
- Could not reasonably foresee the result of their actions
- Reasonably believed conduct was legal
- Is of good character or has had a good reputation in the community
- Defendant has a strong support system (friends, school, family)
- Military service
- Is in treatment (drug, alcohol, domestic violence, medical/psychiatric)
- Employment

Consider sending form letters to prospective supporters regarding content

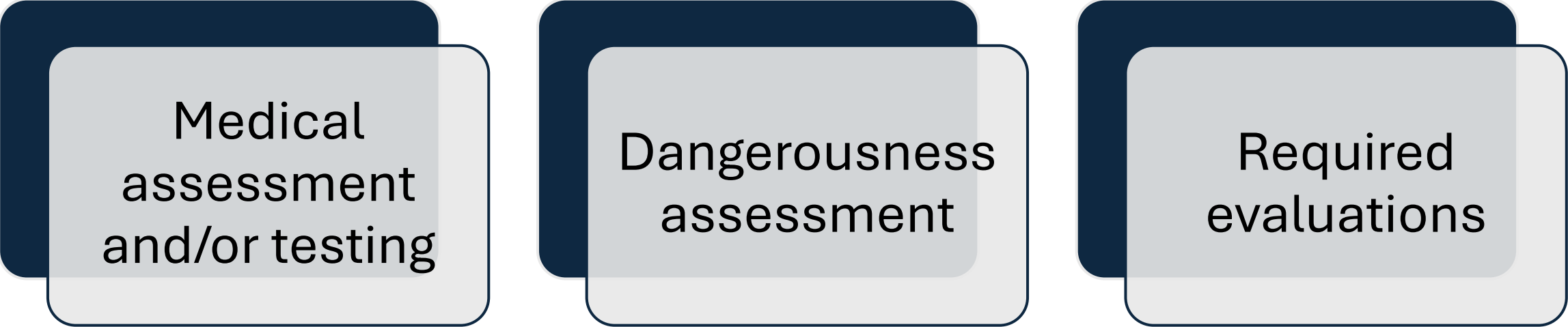
Do

- Identify how long you've known the client
- In what capacity
- Positive information about client
- Why they think they would be successful on alternative sentence
- Send the letters to you

Don't

- Editorialize on their thoughts of the crime
- Speak ill of the alleged victim
- Send letters directly to judge or probation

Experts:



Medical
assessment
and/or testing

Dangerousness
assessment

Required
evaluations

Putting it on paper

Motion for requested sentence

Memorandum in support of the requested sentence

- 
- Theme- similar to an opening statement
 - Logical and resonates with the judge
 - Tell a story
 - Consider your audience

STATE OF WEST VIRGINIA,

V.

0 [REDACTED]
Judge Kaufman

[REDACTED],
Defendant.

**MOTION TO SUSPEND THE IMPOSITION OF SENTENCE FOR A PERIOD
OF PROBATION**

The Defendant, [REDACTED], by Counsel, Ronni M. Sheets and George Castelle, hereby moves this Court for an Order, pursuant to W.Va.Code §62-12-1 et seq. suspending the imposition of a prison sentence in this matter and placing the Defendant on probation or such other alternative sentence as the Court may deem appropriate.

In support of this motion, the Defendant asserts the following:

1. [REDACTED] stands convicted of one count of child neglect resulting in death after a jury verdict on [REDACTED].
2. [REDACTED] is 22 years old. She has no prior criminal record. She is a resident of [REDACTED], WV. If granted an alternative sentence, she would reside with her mother at [REDACTED]
[REDACTED]
3. [REDACTED] is the biological mother of four children (one child deceased), the other children reside with a [REDACTED].
4. Ms. [REDACTED] eligible for probation or other alternative sentencing.
5. The Court, upon consideration of the totality of the circumstances in this case, as well as the information in the pre-sentence report and attached forensic

psychiatric evaluation, should make a finding that the Defendant is not likely to commit crime in the future and that the public good does not require her incarceration. The pre-sentence report demonstrates that [REDACTED] does not have a criminal record, and has a supportive family. She has a brief history of drug use, but was in successful treatment prior to incarceration. She has a steady work history. She was employed at the time of arrest and will seek employment immediately upon release. All of these factors make it very likely that [REDACTED] would be successful in following court-ordered condition of probation or any other alternative sentence.

6. A penitentiary sentence is not merited under the facts of this case. At trial, there was no allegation by the State that [REDACTED] personally injured her child, but that [REDACTED]
[REDACTED]
7. As indicated by the attached Forensic Psychiatric Evaluation: [REDACTED] is not a danger, she possesses no factors associated with a risk of future violent behavior, and she is not likely to commit crime in the future.
8. Regarding any potential risk to children in [REDACTED] care, this Court has terminated [REDACTED] parental rights to her remaining children, and there would likely be Child Protective Services intervention with any future born children.
9. A probation sentence would in no way diminish the crime for which [REDACTED]
[REDACTED] Ms. Thornton would be subject to the control of the Court and whatever reasonable conditions may be imposed. [REDACTED]

has been punished. She has lost a child. Her right to be a mother to her other children has been terminated. She has been incarcerated eleven months, since the day of her child's funeral.

10. The interests of justice would not be served by a penitentiary sentence. The safety of the community does not require incarceration, nor is such a sentence necessary to rehabilitate [REDACTED].

For the previous enumerated reasons, the Defendant moves this Court of an Order suspending any sentence imposed and placing her on probation or any other relief that the Court may deem appropriate.

Respectfully Submitted,

[REDACTED],
By Counsel

Ronni M. Sheets
WV Bar ID#7505

George Castelle
WV Bar ID#672
Public Defender Office
Charleston WV 25330
(304) 348-2323

Counsel for Defedant

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

v.

Case No. [REDACTED]
(Judge Tod J. Kaufman)

[REDACTED]
Defendant.

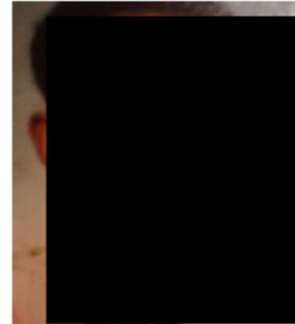
DEFENDANT'S MOTION FOR AN ALTERNATIVE SENTENCE

The defendant, [REDACTED] by counsel, Sara N. Whitaker and Rommi Sheets, moves this Honorable Court, pursuant to West Virginia Code, § 62-12-1, et. seq., as amended, and Rule 32(g) of the West Virginia Rules of Criminal Procedure, to suspend the imposition of the sentence and to place the Defendant on probation under such terms and conditions as the court may deem appropriate. In support of this motion, the Defendant asserts that he is eligible for probation under § 62-12-2 and is a good and proper candidate for an alternative sentence for the following reasons:

[REDACTED] Background

1. [REDACTED] was born on [REDACTED] in [REDACTED] [REDACTED] to [REDACTED]. When he was born, [REDACTED] had two children – [REDACTED] from a previous relationship. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]





p. 2

Continuation of discussion of parent's relationship with each other and defendant

Siblings

Impact of mother's employment schedule, and how it impacted family

Housing and food scarcity



p. 3

Early education

Photo of defendant and siblings



P. 4

Housing and neighborhood (photo)

Family growing up (reference to letter of support)



p. 5-6

Adult life

Relationships and children

Quotes from PSI

Discussion of letters

Photo of defendant and family



p. 7

Discussion of sentencing possibilities

What impact would it have on family

Availability programming in the community



p. 8

Jail conditions and safety concerns

Psychological evaluation



What judges think about sentencing:

Views from the bench

Truth or tea leaves?

- “Studies suggest that 80 percent of the time, a judge has a ‘tentative sentence’ in mind even before the sentencing hearing begins.”
- Danziger, Levav and Avniam-Pesso (2011) found the probability of a favorable decision drops from about 65% to almost 0% from the first ruling to the last within each session, but returns to 65% after a food break.
- Glockner (2023) argues the difference could be attributed to the fact that favorable rulings take longer than unfavorable ones, so a judge using foresight may break before taking up cases that will take more time but yield favorable outcomes



Nationwide

Last Words: A Survey and Analysis of Federal Judges' Views on Allocution in Sentencing

65 Ala. L. Rev. 735 (2014)

2013 National Survey of all federal district judges regarding allocution

What worked? What didn't?

Most impressive

Genuine remorse

Sincerity

Realistic and concrete plans for the future

Sincere apology to the victims

Understand the seriousness of the offense

Least impressive

Defendant victim of circumstance/blaming others or society

Promises not to commit new crime

I can't change the past

Finding religion

Thanking cop for arresting/state for prosecuting

20% said Defendant not adequately prepared for allocution

Judge specific:

Pro

Should be brief

Should rehearse

Explain why it happened

Con

Too brief

Too rehearsed

Don't give excuses

Takeaway on allocation

Extremely important	27	5.3%
Very important	112	22.0%
Somewhat important	269	53.0%
Not very important	91	17.9%
Not at all important	9	1.8%

West Virginia

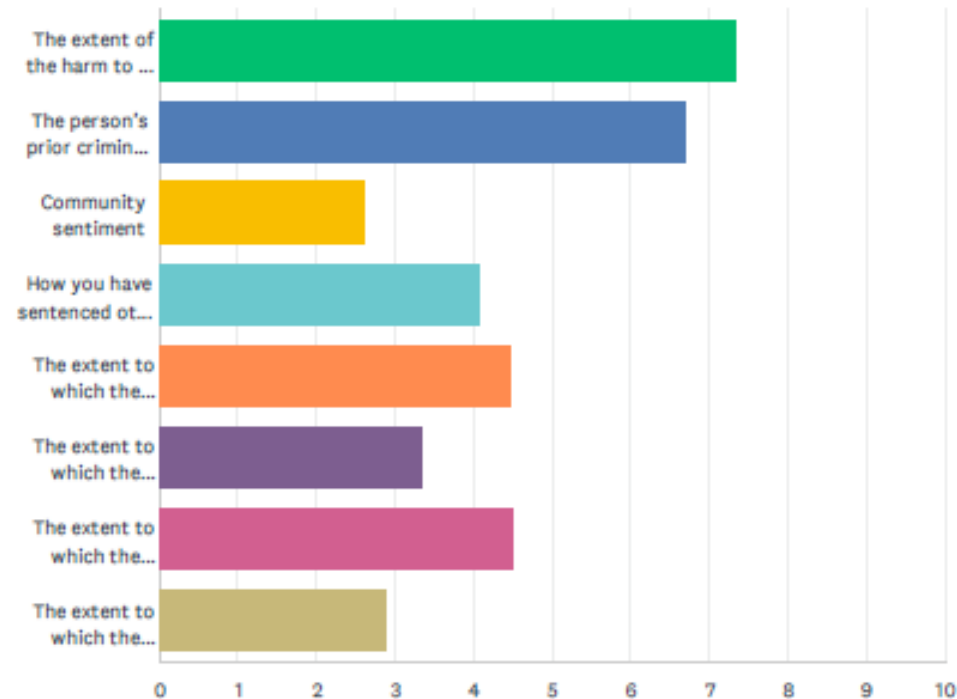
**A Report of the Sentencing Commission Subcommittee of the
Governor's Committee on Crime, Delinquency, and Correction to the
West Virginia Legislature**

December 20, 2021

Survey of West Virginia Judges Regarding Sentencing and Alternative Sentencing Practices

Q20 In cases where current law affords you the discretion to impose a sentence of a determined duration, which of the following factors most influence your decision? (Rank in order, with 1 being most important)

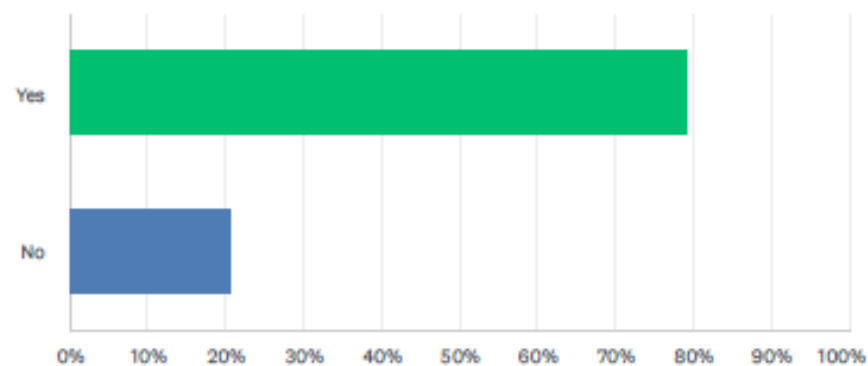
Answered: 34 Skipped: 5



Survey of West Virginia Judges Regarding Sentencing and Alternative Sentencing Practices

Q16 In your view, do you have an adequate range of alternative sentences available in your circuit?

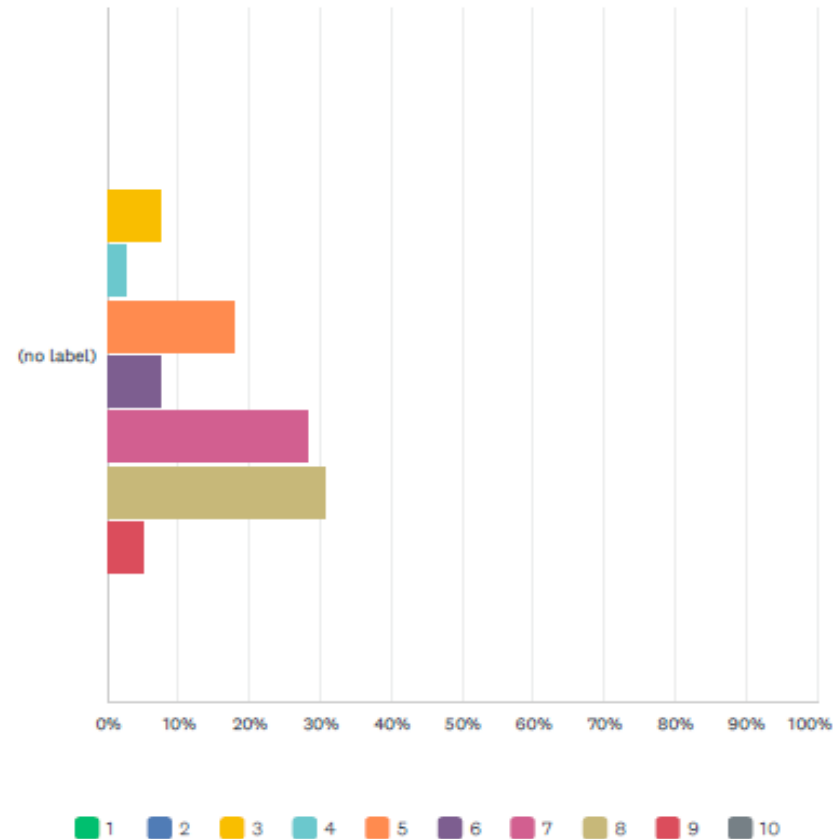
Answered: 34 Skipped: 5



ANSWER CHOICES	RESPONSES	
Yes	79.41%	27
No	20.59%	7
TOTAL		34

Q1 The sentences established by statute for various crimes in West Virginia are generally proportionate to the seriousness of the offenses.

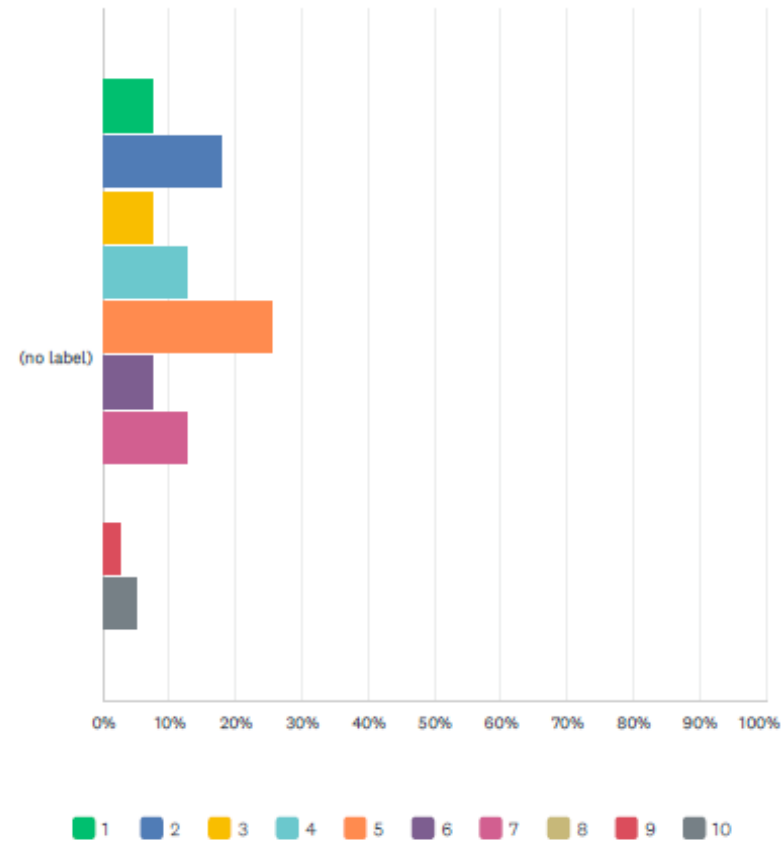
Answered: 39 Skipped: 0



	1	2	3	4	5	6	7	8	9	10	TOTAL	WEIGHTED AVERAGE
(no label)	0.00% 0	0.00% 0	7.69% 3	2.56% 1	17.95% 7	7.69% 3	28.21% 11	30.77% 12	5.13% 2	0.00% 0	39	6.59

Q3 Sentencing in West Virginia should be reformed so as to ensure a greater level of consistency among the sentences imposed on individuals who have committed similar crimes.

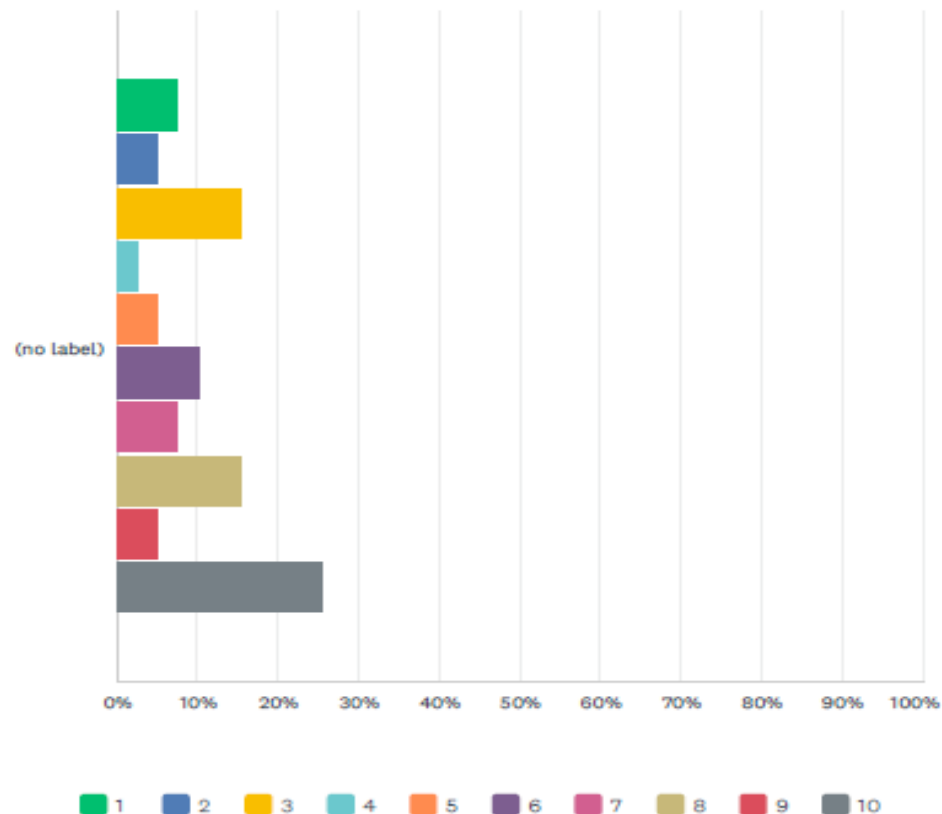
Answered: 39 Skipped: 0



	1	2	3	4	5	6	7	8	9	10	TOTAL	WEIGHTED AVERAGE
(no label)	7.69% 3	17.95% 7	7.69% 3	12.82% 5	25.64% 10	7.69% 3	12.82% 5	0.00% 0	2.56% 1	5.13% 2	39	4.56

Q4 Indeterminate sentencing leaves too much authority in the hands of the parole board to determine how much time an individual actually serves in prison.

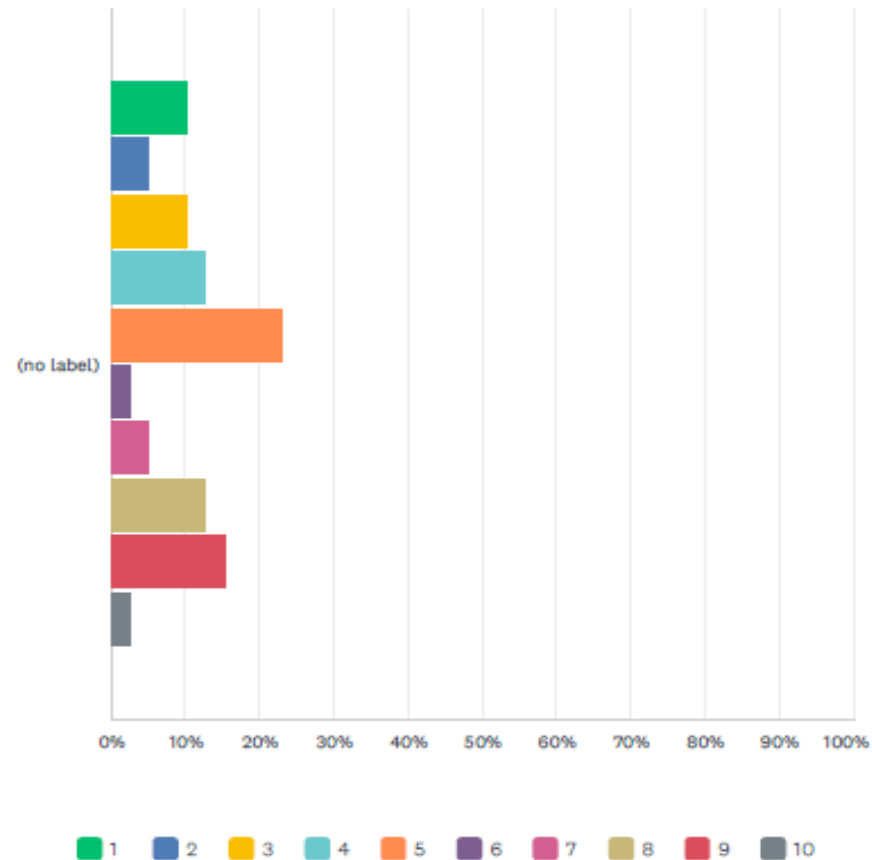
Answered: 39 Skipped: 0



	1	2	3	4	5	6	7	8	9	10	TOTAL	WEIGHTED AVERAGE
(no label)	7.69% 3	5.13% 2	15.38% 6	2.56% 1	5.13% 2	10.26% 4	7.69% 3	15.38% 6	5.13% 2	25.64% 10	39	6.41

Q5 Graduated sanctions are useful in securing compliance from persons placed on probation or home incarceration.

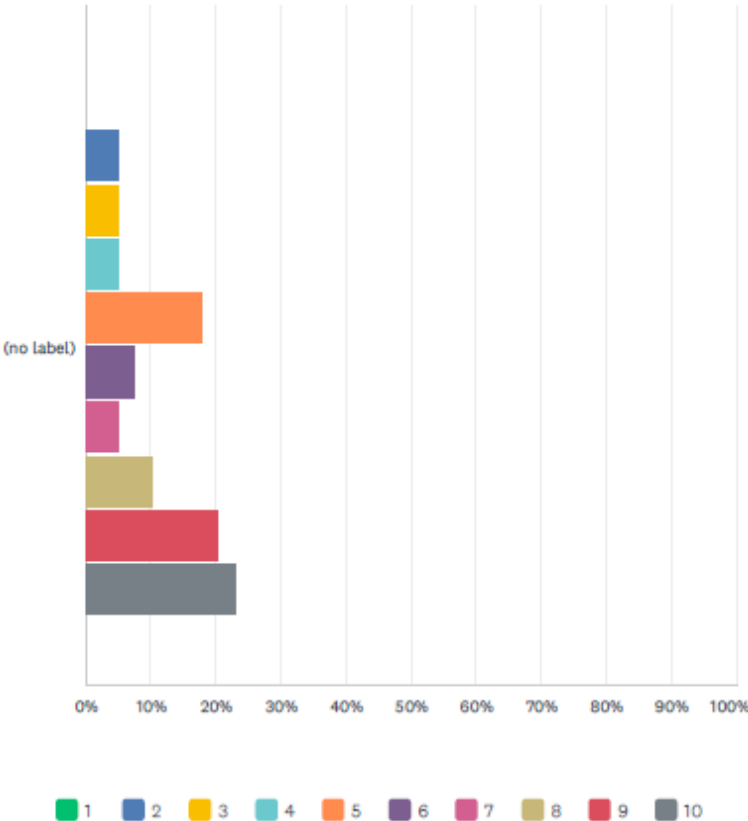
Answered: 39 Skipped: 0



	1	2	3	4	5	6	7	8	9	10	TOTAL	WEIGHTED AVERAGE
(no label)	10.26% 4	5.13% 2	10.26% 4	12.82% 5	23.08% 9	2.56% 1	5.13% 2	12.82% 5	15.38% 6	2.56% 1	39	5.36

Q6 It is important that a person convicted of a crime in one part of the state be treated in a similar manner to another person convicted of the same crime under similar circumstances in another part of the state.

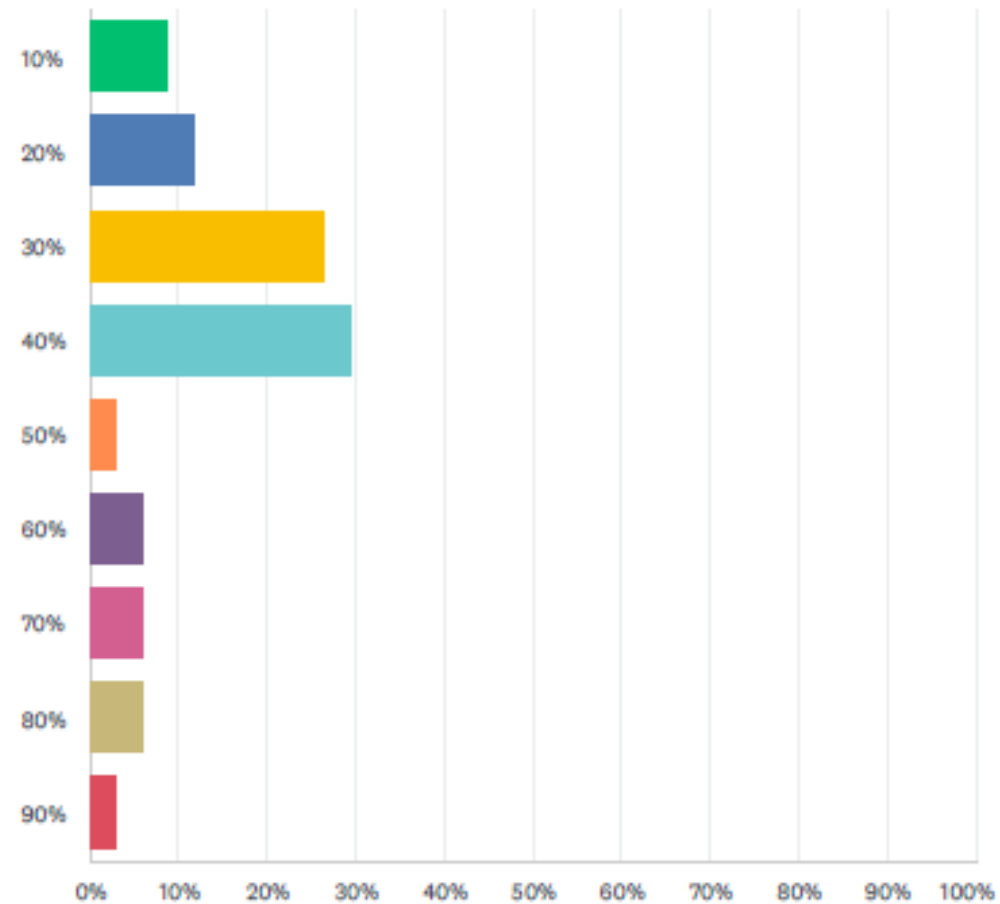
Answered: 39 Skipped: 0



	1	2	3	4	5	6	7	8	9	10	TOTAL	WEIGHTED AVERAGE
(no label)	0.00% 0	5.13% 2	5.13% 2	5.13% 2	17.95% 7	7.69% 3	5.13% 2	10.26% 4	20.51% 8	23.08% 9	39	7.15

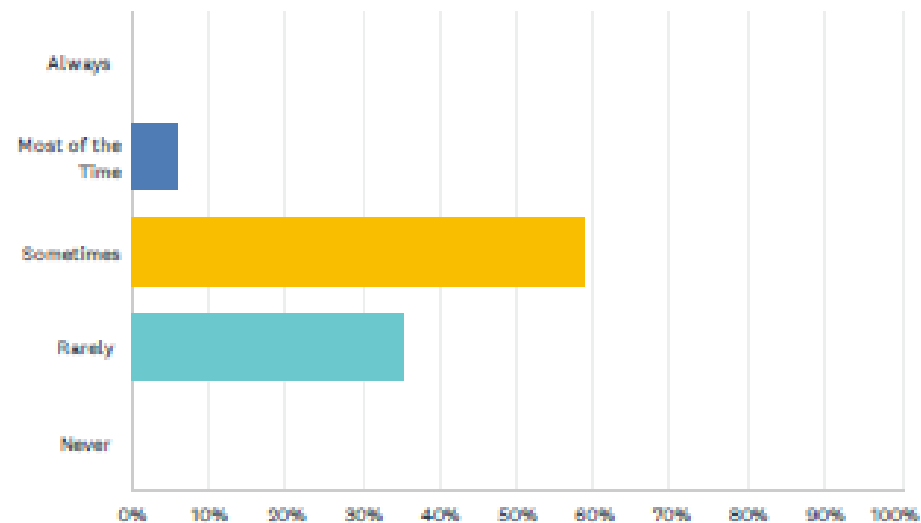
Q11 Approximately what percentage of probationers in your circuit ultimately have their probation revoked?

Answered: 34 Skipped: 5



Q13 How frequently do you revoke probation or home incarceration for a first violation? Please use the comment box to expand on your answer.

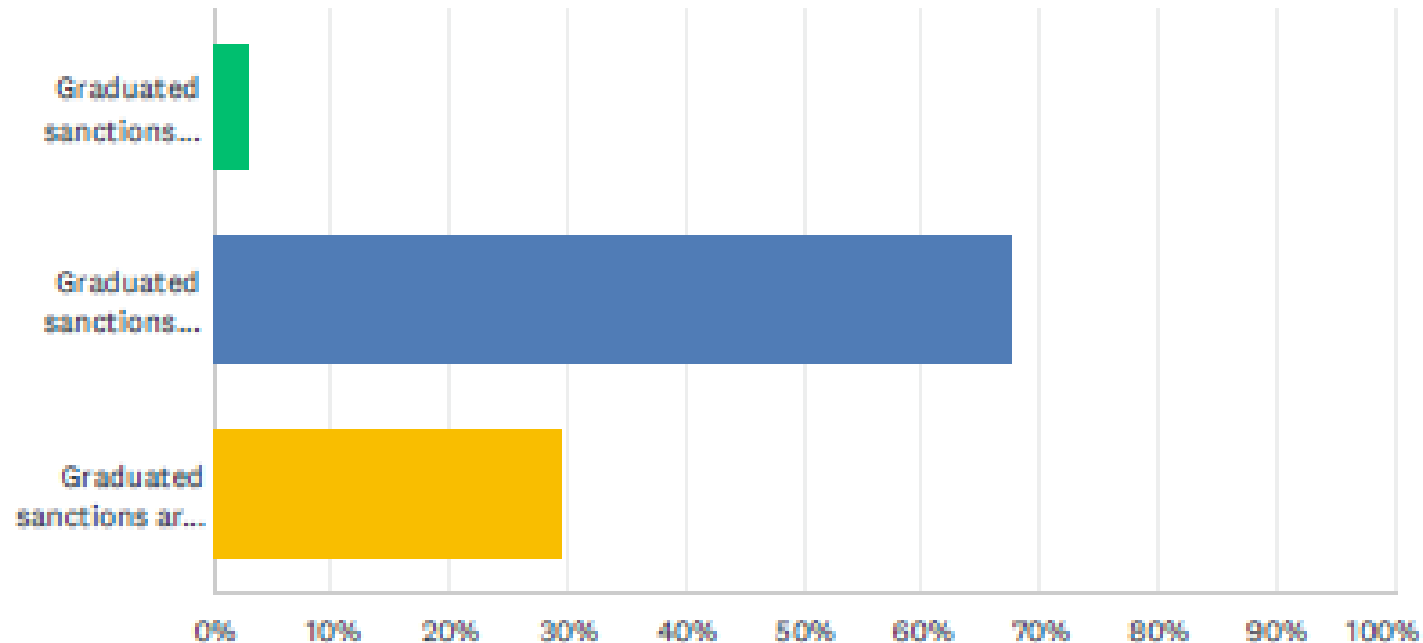
Answered: 34 Skipped: 5



ANSWER CHOICES	RESPONSES	
Always	0.00%	0
Most of the Time	5.88%	2
Sometimes	58.82%	20
Rarely	35.29%	12
Never	0.00%	0
TOTAL		34

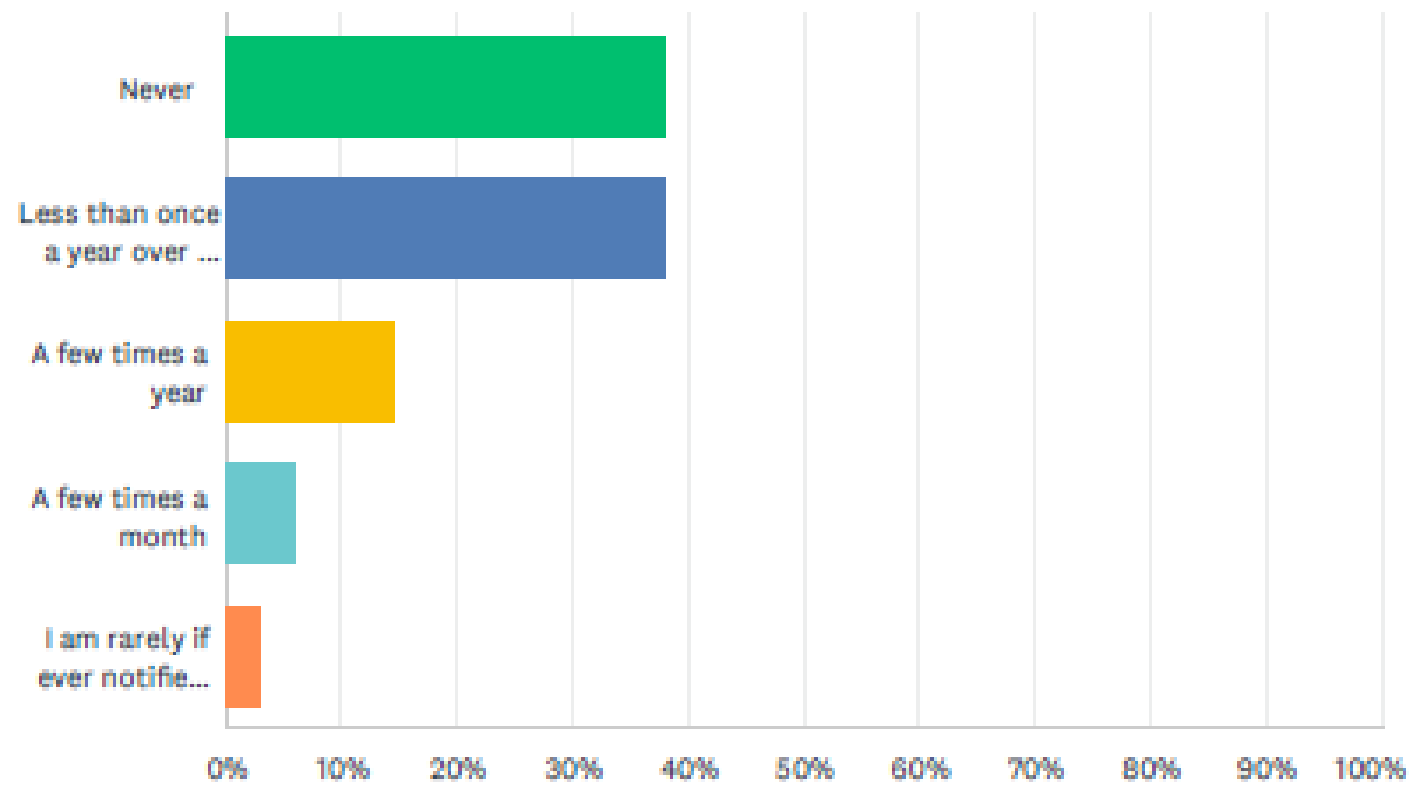
Q12 Which of the following statements best reflects your experience with the imposition of graduated sanctions for violations of probation? Please use the comment box to elaborate on your response.

Answered: 34 Skipped: 5



Q21 How frequently have you provided information to the parole board when you are notified that a person you have sentenced is coming before the parole board for consideration?

Answered: 34 Skipped: 5





- **Recommendation 4:** A survey of Circuit Judges in West Virginia found that most Circuit Judges believe that judges and magistrates do not receive enough training or guidance in how they should exercise their discretion in sentencing. We therefore recommend that this finding be communicated to the Education Committee of the West Virginia Judicial Association and to the Administrative Office of the Supreme Court of Appeals.

- Recommendation of Criminal Sentencing Law Reform for the State of West Virginia 2021

Judges' comments when asked, "What is the single biggest problem with sentencing in West Virginia" :

Additional sentencing considerations

Post plea and sentencing

Rule 32 West Virginia Rules of Criminal Procedure

- Defense counsel at probation interview
- Correct PSI in writing
 - Report goes to Parole Board and DOCR
- Court may, by local Rule or in an individual case, withhold probation's recommendation
- Court must permit argument regarding the PSI and proper sentence; testimony/other evidence is discretionary

Dangerousness assessment

- Paid for by the defense, similar to that used in competency and responsibility

60-day diagnostic examination

Pursuant to §62-12-7a and §15A-4-4, the courts can order a post-plea/pre-sentence diagnostic examination for any defendant convicted of a felony or misdemeanor sex crime involving a minor.

- PSI must be completed prior to evaluation
- Conducted by Psimed at the D&C unit at Northern Correctional

(1) Assessments of a person's criminogenic risk and need factors that are reliable, validated, and normed for a specific population and responsive to cultural and gender-specific needs as well as individual learning styles and temperament;

(2) Application of a mental health preliminary screen; and

(3) If the mental health preliminary screen suggests the need for further assessment, a full psychological evaluation.

The division shall perform mental health preliminary screens, appraisals, and evaluations according to standards provided by the American Correctional Association.

After sentencing

- Reconsideration
 - A sentence is imposed for the purpose of Rule 35(b) when the sentence is verbally pronounced at the sentencing hearing; therefore, the 120-day clock starts at the sentencing hearing, NOT when the order is entered
- Post Sentence Investigation
- If the client is close to parole eligibility or discharge at the time of sentencing, alert the DOCR
- Time sheet is to be prepared within 30 days of receiving the commitment and sentencing order
- Send client sentencing order, commitment, and time sheet

Supervision

- Probation
 - The maximum period of probation is based on the court, not the crime
 - Misdemeanor in circuit court < 7 years, magistrate court < 2 years
- Home confinement
 - Home confinement is a sentence, not a suspension of sentence
 - If paroled to probation, the defendant continues to earn single-day credit
 - Judges have discretion in granting credit for home confinement as a condition of bail

Registries and Mandatory Evaluations:

Registries:

- Child abuse §15-13-1
- Sex offender §15-12-1
 - Both include misdemeanors
- Central abuse registry §15-2C-2
 - Includes abuse and neglect of an incapacitated child or adult and sex offenders

Mandatory Evaluations for probation:

- Sex offender evaluations §62-12-2(e)
 - Incest, sex offenses, and images of children
 - “physical, mental, and psychiatric or psychological study and diagnosis
 - Plan with mandatory counseling
- Cruelty to animals §61-8-19
 - Psychological evaluation
 - Mandatory counseling
 - Misdemeanor no animal for 5 years
 - Felony no animal for 15 years

Notes about competency and responsibility

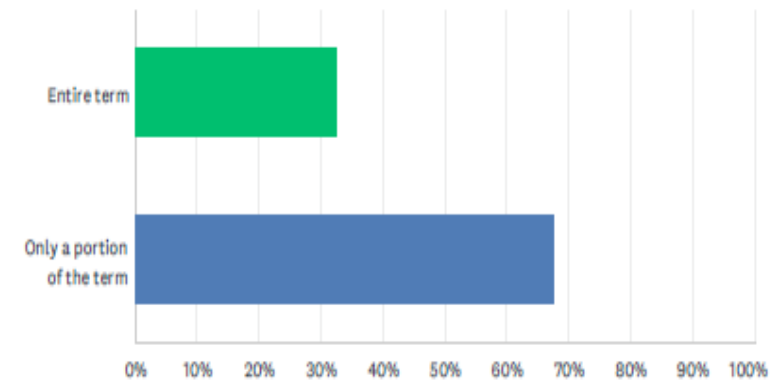
Extended supervision

Extended supervision

- Not just for sex crimes
- Felony crimes under §61-8D (death by a parent/guardian/custodian, child abuse and neglect resulting in injury)
- Extension of the period of supervision
- On appeal
- Try to get a binding term/ argue binding on violations
- Argue constitutional issues

Q19 When a person subject to supervised release following conviction for a sex offense has violated the terms of supervised release, do you typically revoke the entirety of their term of supervised release or only a portion of that term?

Answered: 34 Skipped: 5



ANSWER CHOICES	RESPONSES	
Entire term	32.35%	11
Only a portion of the term	67.65%	23
TOTAL		34

Mandatory parole and conditional release

Discretionary release §15A-4-17(l), §15A-4-17a

- Except for sentences with mandatory parole, judges can order up to 180 days of sentence to be served through post-release supervision.
- DOCR Non-violent offender parole

Mandatory parole §15A-4-17(k)

- Felony crime of violence against a person, one where the victim is a child, or involving use of a firearm
- If the defendant reaches his discharge date without being granted parole, one year of good time is withheld, and the defendant is placed on one year of supervision.

MANDATORY POST-RELEASE SUPERVISION
APPLICABLE CRIMES

CRIMES AGAINST THE PERSON

61-2-1	First and Second Degree Murder Defined; Allegations in Indictment for Homicide
61-2-2	Penalty for Murder of First Degree
61-2-3	Penalty for Murder of Second Degree
61-2-4	Voluntary Manslaughter
61-2-5a	Concealment of Deceased Human Body
61-2-6	Homicide Punishable Within State if Injury Occurs Within and Death Without, or Vice Versa
61-2-7	Attempt to Kill or Injure by Poison
61-2-8	Abortion
61-2-9	Malicious or Unlawful Assault; Assault; Battery
61-2-9a	Stalking; Harassment
61-2-9b	Penalties for Malicious or Unlawful Assault or Assault of a Child Near a School
61-2-9c	Wanton Endangerment Involving the Use of Fire
61-2-9d	Strangulation; Suffocation and Asphyxiation
61-2-10	Assault During Commission of or Attempt to Commit a Felony
61-2-10a	Violent Crimes Against the Elderly; Sentence Not Subject to Suspension or Probation
61-2-10b	Malicious Assault; Unlawful Assault; Battery and Assault on Governmental Representatives, Health Care Providers, Utility Workers, Law-Enforcement Officers, Correctional Employees and Emergency Medical Service Personnel; Definitions
61-2-12	Robbery or Attempted Robbery
61-2-13	Extortion or Attempted Extortion by Threats
61-2-14	Abduction of Person; Kidnapping or Concealing Child
61-2-14a	Kidnapping
61-2-14b	Venue of Offenses under 61-2-14 and 61-2-14a
61-2-14c	Penalty for Threats to Kidnap or Demand Ransom
61-2-14d	Concealment or Removal of Minor Child from Custodian or from Person entitled to Visitation
61-2-14e	One Aiding or Abetting in Offense under 61-2-14, 61-2-14a, 61-2-14c, 61-2-14d Guilty as Principal Venue
61-2-14f	Penalties for Abduction of a Child Near a School
61-2-14h	Prohibition of Purchase or Sale of Child
61-2-16a	Malicious Assault; Unlawful Assault; Battery and Recidivism of Battery; Assault on a Driver, Conductor, Motorman, Captain, Pilot or other Person in Charge of Any Vehicle Used for Public Conveyance

New crimes and enhanced penalties 2026 regular legislative session

- Human smuggling of “illegal aliens” felony adult 2-10, child 3-15
- Bystanders shall stand 30 feet back from first responders misdemeanor
- “gross neglect” of an incapacitated adult- misdemeanor, creating substantial risk of serious bodily injury, felony 1-5, gross neglect by allowing another to grossly neglect, determinate 5-25, and abuse of incapacity causing death, determinate 5-40
- Sexual servitude increased from determinate 3-15 to not less than 25
- DUI causing death, deliberate disregard 5-30, no probation or HC
- Domestic strangulation 2-10, other penalty increases
- Murder and other homicide
 - First degree murder 25-life
 - Second degree 15-60
 - Voluntary 5-25
 - Life other than murder 20 years
 - Life recidivist 25 years to life
- Aiding and enticing escape from a correctional facility, enhanced penalty, adds a new felony
- Bail bill- magistrate may not release a defendant charged with a felony crime of violence against a person, a felony in which the victim was a minor, felony arson or burglary, or a felony drug offense

Additional resources

- West Virginia DOCR policies and procedures online at <https://dcr.wv.gov/aboutus/Pages/Policies.aspx>
- Mitigation Manual- Procedure for Preparing Mitigation Materials for Criminalized Survivors Student Manual, UNC School of Law <https://law.unc.edu/wp-content/uploads/2026/04/Mitigation-Project-Manual-UNC-CSDJC.-FINAL.pdf>
- Mitigation Protocol Manual, First Judicial District of Pennsylvania and Criminal Justice Section, Philadelphia Bar Association https://www.courts.phila.gov/pdf/manuals/mitigation_protocol_manual.pdf

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