

ABSTRACT

MITIGATION USE IN THE RESENTENCING OF JUVENILES FORMERLY SENTENCED TO LIFE WITHOUT PAROLE

The Fresno County Public Defender's Office is responsible for assisting juveniles formerly sentenced to life without parole. The purpose of this project is to provide a guide for the use of mitigation in the resentencing of approximately 268-283 JLWOP cases. The theoretical framework of Positivist Biological Criminology explores the development of the adolescent brain and the its role in the likelihood of engaging in criminal acts. A review of juvenile justice practices, adolescent brain development, successful mitigation use and the switch of juvenile adjudication towards a rehabilitative approach will all be explored. The development of an executive summary, timeline, a mitigation template and educational materials for staff development have been created to assist the Fresno County Public Defender's Office in the integration of mitigation for the service of JLWOP, adult and juvenile clients. Based on the information provided it has been determined that a two-year timeline allows the Fresno County Public Defender's Office to integrate the regular use of mitigation reports by hiring educated staff that can operate in the necessary scope of practice, adopting new theoretical frameworks and using evidence-based research.

Author name: Randi Balderama
May 2021

MITIGATION USE IN THE RESENTENCING OF JUVENILES FORMERLY SENTENCED
TO LIFE WITHOUT PAROLE

by

Randi Balderama

A project

submitted in partial

fulfillment of the requirements for the degree of

Master of Social Work

in the College of Health and Human Services

California State University, Fresno

May 2021

APPROVED**For the Department of Social Work Education**

We, the undersigned, certify that the project of the following student meets the required standards of scholarship, format, and style of the university and the student's graduate degree program for the awarding of the master's degree.

Randi Balderama
Project Author

Dr. Marcus Crawford (Chair)

Department of Social Work Education

Ivana Carter, MSW (Reader)

Fresno County Public Defender's Office

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Signature of author: Randi Balderama

ACKNOWLEDGEMENTS

I would like to sincerely thank the following people for their important contributions to this project: Dr. Marcus Crawford, for his continued guidance of this project. I would like to especially thank the Fresno County Public Defender's Office for their support of the social work profession and its integration in the defense of their clients. Without the support of retired Lead Public Defender Elizabeth Diaz and Supervising Attorney JoAnna Edwards this project would not be possible, thank you both for your belief in the need for the growth of defense social work. I would like to thank Defense Social Worker Jessica Williams and Supervising Defense Social Worker Ivana Carter for providing me with the motivation to persevere and grow. They want the best for their clients and co-workers, and I can only hope to one day to be like them. Lastly, I want to thank my best friend Julie and my family for never giving up on me and constantly helping me get back up when I fell.

TABLE OF CONTENTS

CHAPTER 1: INTRODUCTION	7
Introduction to the Study	7
Background of the Study	7-8
Purpose of the Project	8
Introduction to Conceptual Framework	8-10
Delimitations of Terms	10
Methodology/Design	10-11
Relevance to Social Work	11-12
Summary	12-13
CHAPTER 2: LITERATURE REVIEW	14
Introduction	14
Theoretical Framework	14-16
History of Juvenile Justice	16-23
Life Without Parole	23-25
Supreme Court Cases	25-30
Adolescent Brain Development	30-32
Introduction to Mitigation	32-37
Juvenile Reform in Other Countries	37-39
Progress in Northern California Sentencing	39-40
CHAPTER 3: REFLECTIONS, CONCLUSIONS, RECOMMENDATIONS	41
Project Description	41-42
Discovery	42-43
Conclusions	44
Supporting Data	44
Project Challenges	45

Reflections	45
Recommendations.....	45-47
REFERENCES.....	48-50
APPENDICES.....	51
APPENDIX A: EXECUTIVE SUMMARY	51-52
APPENDIX B: TIMELINE	53
APPENDIX C: MITIGATION SAMPLE	54-66
APPENDIX D: EDUCATIONAL POWERPOINT.....	67-73
APPENDIX E: ACES INFORMATIONAL FORM.....	74-75

CHAPTER 1: INTRODUCTION

Introduction to the Project

The Fresno County Public Defender's Office has introduced mitigation reports to assist clients' sentencing as recently as three years ago. The defense may put on evidence of mitigating factors that would support leniency in sentencing. Criminal rulings traditionally give far less attention to factors that may mitigate a punishment. In 1978 *Lockett v. Ohio*, the court considered mitigating factors in death penalty cases (Rovner, 2020). In *Lockett v. Ohio*, mitigating factors included the victim's role in the crime, whether it is unlikely that the crime would be committed under duress or provocation and if the crime was a result of the offender's mental diagnosis.

At the end of 2016, 2,310 individuals served life without parole sentences they received as juveniles in the United States. In *Montgomery v. Louisiana* 2017, the Supreme Court abolished all juvenile life without parole (JLWOP) mandatory sentences (Rovner, 2020). Now, youth who were previously ineligible for parole due to life sentences will be granted new sentences or have the original penalty assessed. This reevaluation is occurring in 29 states, including California. As only a tiny fraction of former offenders have been released, the use of mitigation becomes essential to the resentencing of many.

Background of the Problem

In 2012 the Supreme Court ruled in *Miller v. Alabama* that both state and federal governments are lawfully required to consider circumstances unique to each juvenile defendant (Rovner, 2020). The 2016 Supreme Court ruling allowed for retroactive application of the 2012 decision.

The use of adolescent brain development research corroborated the commonly held belief that adults and children differ in their understanding of appropriate actions and thought

processes. Parents have always known that children's decision-making abilities, experience, and emotional growth differ from their own. Understanding that children's brains are developmentally different from adults, mitigating factors were included to find the most appropriate rehabilitative sentencing. Past traumas, including neglect and abuse, mental health, client remorse, and infrequency of criminal behavior, are all used to support the mitigation of a sentence. The current climate of exposing systemic oppression has also become vital to socioeconomic factors and adverse childhood events linked to race, abuse, and mental illness issues.

Purpose of the Project

The purpose of this project is to provide the Fresno County Public Defender's Office with a comprehensive guide to instituting the regular practice of mitigation report use. With the Supreme Court decisions that made life without parole unconstitutional for juveniles, counties nationwide have to reassess previous sentences handed down to juveniles. The mitigation reports will initially be used to reexamine JLWOP sentences but can later be used to support implementing the most beneficial sentence for any juvenile offender.

Introduction to the Conceptual Framework

Positivist criminology considers three elements: the search for causation (including biological), the use of the scientific for testing theory, and the rejection of punishment as a response to deviant or delinquent behavior, favoring instead of treatment. Positivist criminology assumes that criminal conduct has its own distinct set of characteristics. Research in a positivist paradigm has sought to identify differences between those deemed criminals and those not. Some theorists have focused on biological and psychological factors, often locating elements within the individual's biological makeup. In a theoretical consideration, modern studies have shown that

violent offenders' brains and the brains of other individuals differ in both structure and function. Sample sizes are small and there cannot be any generalizability. But many of the studies have relied on small sample sizes, which reduces the generalizability of these findings. Despite questions of whether violence came from biological brain structures, it has still been used to mitigate criminal offenses. Cesare Lombroso is primarily considered the father of the positivist criminology theory, but Adrian Raine and Rebecca Umbach have produced current work (Ling, Umbach, & Raine 2019) . Understanding the role of biology in antisocial and criminal behavior may help increase the explanatory power of recent research and theories and inform policy and treatment options.

The formulation of the history of juvenile justice, the current procedures in other states, and the collaborations needed to advocate for juvenile mitigation aid in the understanding of why a systematic plan for juvenile mitigation, in particular with juveniles who need to be resentenced after the overturning of sentences for life without parole is necessary. When life without parole was ruled unconstitutional for minors there was a need for a guide to help determine appropriate sentencing. Sentencing has never accounted for the developmental differences in adults, as seen in 18th-century juvenile sentencing, where juveniles were housed with adult criminals. The New York House of Refuge was the primary location for housing poor and delinquent youth that enforced racial and socioeconomic differences systemically. The 1960s brought about a formalization of juvenile courts by the Supreme Court to provide more due process protections. But the 1980s saw a rise in juvenile crime resulting in punitive measures including automatic transfer to adult court and mandatory sentencing. The 1990s sought to be "tougher on juvenile crime," increasing institutional confinement for all offenses, including those that were minor.

Supreme Court decisions in 2010, 2012, and 2016 ruled life without parole sentences for juveniles unconstitutional and reversed all JLWOP sentences retroactively. Alabama juvenile attorneys initially started the use of mitigation in cases. Factors which include past abuse, neglect, family violence, broad exposure to trauma, possible disabilities, which may consist of Fetal Alcohol Spectrum Disorders, were used to explain but not excuse the criminal act. Personal history is beneficial in resentencing, but the positive results were seen in their use in the expungement of juvenile records that previously kept individuals from receiving educational benefits or gaining employment.

Definition of Terms

LWOP: A sentence of imprisonment for a criminal conviction until natural death or a pardon.

JLWOP: A sentence of imprisonment for an individual's natural remaining life for a criminal conviction. The individual is convicted before the age of eighteen for the crime.

Mitigation Report: Collective document created to share the relevant history of a client as it pertains to the crime a person was convicted for.

Mitigating factors: A fact or circumstance that may lessen the severity or guilt of a criminal act. Examples of mitigating factors include but are not limited to reform, mental illness, substance addiction, positive past behaviors, and adverse childhood events.

ACES: Adverse childhood experiences are potentially traumatic events that occur from 0 to 17 years. Examples include abuse, neglect, or being a witness to violence.

Methodology/Design

The project will take place in Fresno County, California, within the Public Defender's Office. A defense social worker was placed on the Juvenile Justice Campus in August of 2020.

All four defense social workers and the supervising defense social worker have all received mitigation training, with one defense social worker actively completing mitigation reports for adults. In May of 2021, mitigation reports will be used to resentence JLWOP individuals and offenders who present with adverse childhood experiences or other unique factors that would benefit from less to no initialization for punishment. This project will affect all juvenile offenders with misdemeanor or felony crimes, including murder. The product is the number of mitigation reports created and provided to the attorneys and their usefulness in the case. The benefit will be determined by attorney feedback and whether sentences are altered. A template will be developed for mitigation reports for juveniles including a detailed description for what each section requires, how to obtain the information, and why it is relevant to the report.

Relevance to Social Work

Adolescence is a time of change in human development. It is time for one to explore individuality and independence and engage critical thinking skills. Children can function through this time based on positive and negative interactions with their family, social structure, education environment, and the policies governing their environment. Many young people can navigate their adolescence due to consistent support and nurturing. But this is far too often not the case due to an adverse childhood. Drug use, violence in the home, poverty, and lack of a supportive community network can delineate adolescents' induction into the juvenile justice system. These individuals who face discrimination and disenfranchisement may find necessary the assistance of the social work system. The introduction of social work to those vulnerable to substance abuse, mental illness, and juvenile delinquency can provide that extended missing supportive network needed for a successful transition into adulthood.

Juvenile offenders have often been at a disadvantage in criminal proceedings. They are less likely and often unable to assist in their defense. The differences between juveniles and adults have long been recognized in the age requirement for voting, drinking alcohol, getting married, or even serving on a jury. If the fundamental developmental differences are acknowledged in these types of laws, they most certainly should be applied in the sentencing for juvenile offenders. Adolescents can successfully rehabilitate, which should be incorporated in sentencing. Adolescents can be sentenced to enrollment in treatment programs or given back the opportunity to participate in rehabilitative programs provided while incarcerated. Stepping away from the emphasis of crime and punishment thrust upon adolescents in the latter part of the 20th century gives courts a chance to review unique circumstances, not for a guarantee of release but an understanding of fitting rehabilitative services.

Summary

Fresno County is faced with the challenge of resentencing individuals sentenced to life sentences without parole when a juvenile. This project will inform the Fresno County Public Defender's Office of the fundamental need for mitigation to be employed not only when adolescents need to be resentenced, but when adolescent offenders are tried for minor crimes. The use of mitigation has been used in 2020 to assist attorneys in adult cases but has yet to start on the Juvenile Justice Campus in Fresno, California. These individuals being processed through the juvenile justice system often face discrimination and disenfranchisement requires the support of a defense social worker trained in mitigation. The introduction of social work to those vulnerable to substance abuse, mental illness, and juvenile delinquency can alter their life path and give them a second chance where one had never been offered before. This project will elaborate upon past research in areas including relevant Supreme decisions, a theoretical

framework for examination, and an exploration of what other states have put into place regarding mitigation use.

LITERATURE REVIEW

Introduction

Juveniles who were formerly sentenced to life without parole (LWOP) face a future filled with uncertainty. The juvenile legal system must now find an appropriate sentence for juveniles that have committed serious felonies. At this time, mitigation is not currently being used in minors' resentencing formally sentenced to life without parole. Mitigation provides the court with a history of a juvenile's life, including adverse childhood experiences (ACES) such as, but not limited to child abuse, socioeconomic factors, trauma, and mental illness. Most recently, mitigation has also tapped into the role the adolescent brain plays in juveniles' delinquent acts. Mitigation is not only for the resentencing of LWOP juvenile offenders. The presentation of ACES can be applied to all juvenile offender cases, including misdemeanors. The use of mitigation assists the legal system in choosing rehabilitation as opposed to strictly punitive measures. This chapter will provide an outline of the theoretical framework proposed for this project and the empirical literature on this topic.

Theoretical Framework

Early on in the development of criminological theory, deviant behavior was considered a result of predisposed biological and mental factors. Currently, the belief in eugenics is no longer accepted but biology as a reason for criminal behavior is still being explored. After World War 2, the link between Nazis and their interest in eugenics caused criminologists to avoid even the slightest suggestion that biology could carry weight in a criminal act (Rocque, B. Welsh, B. & Raine, A., 2012). However, a growing body of literature has focused on biological and psychological risk factors that occur early in life. The influx of this literature has breathed new life into biological criminology theory. Previous work focused on the unethical promotion of eugenics, but more contemporary works hope to advocate for environmental improvement resulting in healthy juvenile development (Rocque et al., 2012). Crime prevention through the lens of theory now

addresses a child's development in their environment. The past belief that some are just born bad is discouraged. Criminal theorist Richard Moran expressed that rehabilitation could be used and achieved once a centered biological theory has shown to be practical and useful (Rocque et al., 2012). Current research supports the fact that poorly developed environments negatively affect a child's brain development (Rocque et al., 2012). The new approach to the biological theory has pointed out that cognitive behavior programs can help identify triggers in the environment when genetic risk factors are present. Biological criminology theory has concentrated on identifying biological risk factors, leading to an early screening of deficits in the prefrontal cortex (Rocque et al., 2012).

Most importantly, this theoretical approach does not suggest altering biological factors to prevent crime. Instead, identifying biological factors can inform early intervention strategies, specifically for those that are recognized as genetically in need of assistance (Rocque et al., 2012). A deficiency can be identified by trauma experienced during the first two years of growth. Cognitive development can be severely altered during this developmental stage by an environment that provides more significant risks, including lower socioeconomic status, less educational opportunities, and decreased employment chances (Rocque et al., 2012). Criminogenic needs can be focused on by programs attuned to specific brain impairments (Rocque et al., 2012). It is easy to reject the entire biological criminological history sections as dangerous and deterministic (Rocque & Posick, 2017)). It is necessary to understand that misinterpretation of the biological model can lead to distrust and abandonment of that research line (Rocque & Posick, 2017). In 2013 Adrian Raine published *The Anatomy of Violence* leading to the dismissal of biological criminology. Raine's work's oversimplification overlooked the argument that both environmental and biological factors warrant attention (Rocque & Posick, 2017). Integration of social elements

into a biosocial model can lead to a better understanding of human behavior concerning criminal acts. Current biosocial scholars argue that they face difficulties in acceptance by criminology as a whole (Rocque & Posick, 2017). Criminologists must come to terms that biology does matter in terms of criminal behavior. The most advanced efforts to marry the environment and biology in criminological theory have used gene x environment models (Rocque & Posick, 2017). Gene x environment models strive to provide a clear picture of behavior and its origin in both the environment of the individual and their biological history (Rocque & Posick, 2017). Biosocial criminology can be used in the development of public policies and programming (Rocque & Posick, 2017). This approach also provides hope that change can be made to biological factors that impact brain function (Rocque & Posick, 2017). Pharmaceutical treatment, nutritional assistance, and mental health conditions can be attended to early through brain imaging (Rocque & Posick, 2017). The biosocial theory offers a new formula of scientific knowledge and environmental identification to better assist juveniles before criminal contact (Rocque & Posick, 2017).

History of Juvenile Justice

New York House of Refuse History

Addressing the accumulation of knowledge about the juvenile justice system is necessary to make the required moves forward (SenGupta, 2009). The purpose of passing judgment on the past allows current scholars to sift through which questions are still present and whether it will be fruitful to address them. In regard to the juvenile justice system, those currently pushing for reform can find the most valuable methodologies and acknowledge those that failed and will not be of use (SenGupta, 2009). The call for reform of a system that affects children is an ongoing issue. When infusing the history of the discipline in the contemporary discussion, the present-day workforce will receive a necessary dose of

humility. The problem is not new, and others have blazed the same trail looking for reforms that will benefit adolescents.

The New York House of Refuge (NYHR) is noted as the first juvenile reformatory in the United States (SenGupta, 2009). The NYHR has a history spanning over 110 years, from 1825 to 1935. The NYHR received praise for tackling juvenile delinquency and subsequent reform (SenGupta, 2009). Crimes, including petty theft and vagrancy, resulted in juvenile's being sent to the NYHR. Both males and females were accepted, with the largest population rising to over 1,800 in total (SenGupta, 2009). Every juvenile was committed indefinitely as the NYHR exercised authority over each youth. The state legislature provided funding through taxes on taverns and circuses' licenses and the fees put on seamen. This money was justified because immigrants and inappropriate commercial entertainment were thought to cause juvenile crime (SenGupta, 2009).

NYHR Approach to Racism

In the first ten years of operation, the NYHR accepted black juveniles. However, acceptance did not mean integration. The commonalities between the white poor and black poor were more significant than the differences causing the NYHR to be similar to other institutions. They began to attempt to reconstruct the character of the poor. Character reconstruction was most easily seen in the acceptance of vagrants into the institution. Black juveniles and primarily Irish immigrants were able to tap into the salvation offered through the reformatory's charitable nature (SenGupta, 2009). The NYHR aimed to culturally assimilate those juveniles housed in the reformatory to provide them with a chance at becoming marketable members of society. The reformatory identified the constraints placed on this population and became a multipurpose relief organization. The reformatory provided single mothers with childcare with no deadline enforced. Pregnant teenagers were offered

housing, and medical and mental health care was given through an asylum for young children (SenGupta, 2009). In the earlier years of operation, those still being held as slaves and that recently granted freedom were offered shelter. Mediation was often provided for complicated family relationships, and the housing of the juveniles rendered some relief for poor parents, both black and white. The mission of the NYHR became a blurring of the offering of both assistance and punishment (SenGupta, 2009).

The nineteenth century was rife with the imposed belief system of the rich that there were sections of the poor, those that were worthy and those that were unworthy. As time progressed through the Civil War, the NYHR had already established an underclass identity that was not racially specific. Segregation then began to become solidified in the Refuge (SenGupta, 2009). The Refuge found labored contracts and indefinite commitments to create an overhaul of the system. The fight against the belief in economic self-sufficiency and morality that primarily white reformers claimed was the way to change (SenGupta, 2009).

William Groorsbeck was a fifteen-year-old black juvenile who spent some time on the seas. Groorsbeck lost his job, board, and lodging, which led his parents to take him to the police and commit vagrancy (SenGupta, 2009). For the Groorsbeck family, the NYHR was an opportunity for economic change and a possible rise in cultural standing. Society has reiterated the widespread belief that many black families are almost reticent in using the available resources. The Refuge still, under societal pressure, deferred to racist rhetoric to classify inmates. White juveniles were pushed to show their worthiness for citizenship by using virtues of honesty and obedience (SenGupta, 2009). Primarily Irish immigrants used this clout to establish their rights to the natural rights that coincide with American citizenship. Politically white inmates were able to lead to reform in the NYHR in the early

1900s. Black inmates did not have the same hold over the system, but all inmates used the system to negotiate to have their needs met in one way or another (SenGupta, 2009).

The evolution of the NYHR resulted in it becoming a holistic member of an interdisciplinary team comprised of philanthropists, people in business, and politicians who wished to form the young inmates into proper members of a growing society. Every child was handed a bible, a suit of clothes, and money as they left the reformatory (SenGupta, 2009). Boys headed off to work under farmers, mechanics, or in a manufacturing plant. Girls were sent to be domestic servants until the age of eighteen. This system was centered around the Protestant belief of servitude and domesticity. The Refuge claimed to be the savior of over 1,100 youths from falling victim to the depths of degradation (SenGupta, 2009).

NYHR Concerns That are Still Contemporarily Relevant

After the Civil War, black inmates remained steady in their inclusion of the Refuge, in contrast to the drop among Irish immigrants. When black children were accepted, they were prepared for a workforce without acknowledging their need for education on how to exercise their rights as an American citizen (SenGupta, 2009). Civic equality was not guaranteed or even pushed for as European immigrants became homogenized into white individuals and black individuals remained separate. Black inmates were not always admitted at the hands of a parent; other family members turned in a disproportionate amount due to black children's high fosterage. Many young black children were charged with theft of food, clothing, or a needed household item (SenGupta, 2009). Those who were convicted of these petty crimes were sent to serve on the Civil War's front lines, unlike those admitted for felonies like arson. The socioeconomic division dissolved into clear racial boundaries, of the savable, often middle-class white citizens and black inmates.

Late 19th and 20th Century Actions

The current juvenile justice system can trace its insufficiencies to the government's role in the early 19th century. Despite the government stepping in as the protector of those who could not properly care for themselves, they did so in a mostly punitive manner (Ferdinand, 1991). When first introduced on the East coast, the juvenile justice system had to establish what role it would take in juveniles' lives. During the 1800s, adolescents became an issue of grave concern. Education had become a requirement as industrialization swept across the United States, resulting in a growing number of children who fought against a society trying to shape them into acceptable adults (Ferdinand, 1991). The government created the juvenile justice system to reinforce the family unit's authority and the school system (Ferdinand, 1991). As children continued to engage in crimes, communities were at a loss to handle them, resulting in offenders being sent to criminal courts (Ferdinand, 1991). Conviction more often than not resulted in placement in an adult facility instead of a juvenile institution. On the eve of the 20th century, the civil court was overseeing various public and private programs that were addressing the needs of juvenile delinquents (Ferdinand, 1991). There were reform schools that took children convicted of criminal acts, explicitly accepting children with minor offenses, and almost thirteen schools specializing in treating children acting out against parental authority (Ferdinand, 1991).

Introduction of a Juvenile Justice System

Along with an official juvenile specific court, the first juvenile code started in Chicago in 1899. All offenders were seen in this court including dependent and neglected children (Ferdinand, 1991). The government took over the authority to become a legal protector of those who could not protect themselves using the concept of *parens patriae*. The new system created a partnership with already established social services as it

conducted assessments with a new specialized knowledge not used in previous court systems (Ferdinand, 1991). In the flurry of implementing the new system, little was done to provide a central center of direction. Many were unsure how to directly address juvenile crimes, realizing that adolescents needed both compassion and a firm hand.

This lack of a clear direction for sentencing led to the pendulum swinging wildly into the world of severe punishments. Well into the 1960s and 1970s, the therapeutic measures taken were often worse than standard punishment, despite the sincerity that backed it (Ferdinand, 1991). Racial discrimination was prominent in the juvenile court system resulting in a misappropriation of justice. California pushed to establish a clear delineation between delinquents and status offenders in their first juvenile statute, and New York followed suit with the Family Court Act of 1962.

In the 1970s, states evolved further by making treatment voluntary for status offenders as they had not committed any crime and should not be institutionalized or confined (Ferdinand, 1991). The Office of Economic Employment launched a massive prevention program during President Johnson's War on Poverty. In the mid-1960s, under the impetus of President Lyndon Johnson's War on Poverty, a significant effort to prevent delinquency and rehabilitate delinquents was undertaken by the Office of Economic Opportunity. The programs, launched in both New York and Chicago, attempted to tackle every group from preschool age children to gangs, to school-age children and even adults. Other states, including California, built community programs with the backing of the Ford Foundation and the federal government (Ferdinand, 1991). No initiative was found to be effective, no matter its location.

With time a system of state juvenile facilities was established with the primary objective being to confine young offenders. Rehabilitation was always given a secondary role despite its success as a public relations tool. Programs for treatment and rehabilitation have often, if not continuously, been funded by philanthropic groups, religious organizations, and the federal government. A hierarchy was established based on access to funding, with correctional facilities landing on top (Ferdinand, 1991).

Juvenile Justice Delinquency Prevention Act

In 1974 Congress passed the Juvenile Justice Delinquency Prevention Act (JJDPA), which embraced the view that disobedient or truant youths not engaging in criminal acts should be treated without the use of institutionalization (Shubik & Kendall, 2007). Their placement needs would then be addressed by social services (Shubik & Kendall, 2007). With its initial passage JJDPA disqualified states from receiving funding if they had been detaining status offenders. Status offenders were to be housed in placements or at home if appropriate (Shubik & Kendall, 2007). JJDPA hoped to ensure that status offenders were segregated from delinquents, decrease stigmatization associated with institutionalization and push the need for rehabilitation in the hands of the community at large (Shubik & Kendall, 2007).

Life without Parole

Life without parole sentences do not happen without affecting capital punishment in the United States, and California, specifically (Vannier, 2012). From as early as the 1970s, LWOP had become a normalized alternative to the more severe practice of the death penalty. The acceptability of the anti-death campaign reform has skewed the public's view of the LWOP and the seriousness of a sentence to life imprisonment.

History of LWOP

Chicago, Illinois, was the first city and state to recognize the need for difference in children and adults (Cothorn, 2000). In 1899, it was apparent that children were receiving severe treatment for crimes in a justice system designed for adults. At this time, a juvenile court was established to acknowledge developmental differences between adolescents and adults (Cothorn, 2000). This initiative started to provide a rehabilitative approach to juvenile crimes, but at the closing of the 20th century, a return to strong punishments was made. During the 1980s and

1990s, there was a spike in violent crimes, and the criminal justice system retaliated by instituting capital punishments for adolescents who committed crimes before their eighteenth birthdays (Cothorn, 2000). Between 1983 and 1986, the Supreme Court refused to consider a total of five cases that were instituting the death penalty on juveniles (Cothorn, 2000). Even when the Supreme Court did overturn a decision as in the 1987 case of *Thompson v. Oklahoma*, only four Justices agreed that imposing the death penalty on an individual under eighteen would be considered cruel and unusual punishment (Cothorn, 2000). There have been a total of 196 juveniles who received death sentences. While this is less than 3 percent, out of the 6,900 individuals who received the death penalty, 73 percent committed their crime at the age of 17 (Cothorn, 2000). Most important to the argument for mitigation use is that approximately half of those sentenced to the death penalty had experienced abuse and unstable home environments. Still, another set suffered from mental health issues, including paranoia and depression (Cothorn, 2000). In 67 percent of the cases, there was at least one adverse childhood experience present.

20th century Sentencing Reform

The juvenile justice system of the 1960s and the 1970s set up rehabilitation goals and different sentencing for adolescents. However, with the closing of the 1970s and the ushering in the 1980s, Congress and various Presidential commissions' belief in prevention and minimal institutionalization were sidelined for the incarceration of minor offenses (Butts, Steketee & Schwartz, 1991). The 1960s and 1970s were not without their issues. The training schools established as an alternative to incarceration were revealed to have deplorable conditions with lawsuits citing abuse (Butts et al., 1991). The Juvenile Justice and Delinquency Act of 1974 gave states financial incentives to deinstitutionalization of juveniles considered status offenders (Butts et al., 1991). A status offender would be any youth labeled a runaway, truant, or in a family

conflict. The act also promoted community-based alternatives for nonviolent offenders and training schools (Butts et al., 1991).

The professional opinion stated that adjudication was only necessary when juveniles were a substantial threat to the community or a flight risk. In 1980 the National Advisory Committee for Juvenile Justice and Delinquency Prevention (NACJJDP) further insisted on a decrease in incarceration by recommending that adolescents in juvenile court not be held unless they were a flight risk, charged with murder or property damage, or previously involved in the adjudication process (Butts et al., 1991). The acts in the 1970s and 1980s seemed to spotlight the shift from incarceration to rehabilitation, pushing for real reform. However, studies of the 1980s suggest little change, with some states becoming more punitive in their policies. Lawmakers and the juvenile justice system became focused on both social control and punishment. The rise in crime rates pushed juvenile lawmakers to become punitive (Butts et al., 1991). Sentences were even more challenging, and the public supported the idea of locking all criminals up and throwing away the key. In 1982 it was clear that the general public had a somewhat distorted view of juvenile crime. Members of the community were under the impression that juvenile crime rose at a shocking rate (Butts et al., 1991). There was a growing gap between the belief in community-based support and housing for juveniles and the institutionalization of them. Between 1977 and 1986, there was a surge of 600% adolescent admittance to detention centers (Butts et al., 1991). Even more concerning is that in Alabama, over 74% of juveniles were being placed in detention centers for status offenses (Butts et al., 1991). It is also important to note that sex did appear to play a difference in detention for minor crimes and length of time. Female juveniles were more likely to be incarcerated for minor offenses and extended periods (Butts et al., 1991).

Supreme Court Cases

In the last two decades juvenile law, specifically around sentencing, has changed dramatically. The Supreme Court, with the use of adolescent brain development research, passed down decisions which rendered juveniles less culpable than adults in criminal acts. The harshest punishments including LWOP were ruled as cruel and unusual punishment for adolescents.

Roper v. Simmons (2005)

Roper v. Simmons' imposed the decision that states could not execute anyone who was under the age of eighteen when they committed their crime. This decision started the understanding that the juveniles held immature decision-making skills and were often vulnerable to peer relationships. With this understanding, the courts recognized the difference between youths and adults, with youths not deserving of the most severe sentences (Field, 2008). Roper emphasized the main takeaway was the adolescents are in a transitional state of growth, making it much more challenging to apply moral responsibility to them to a certain extent (Field, 2008).

Graham v. Florida (2010) and Miller v. Alabama (2012)

In 2010, Graham v. Florida built on Roper v. Simmons by deciding that states cannot sentence juveniles to mandatory LWOP for offenses other than murder (Benekos & Merlo, 2019). Miller v. Alabama ruled that mandatory LWOP sentences for youth that committed murder were also in violation of the Eighth Amendment. These two Supreme Court decisions set in motion the exit from the punitive measures put in place during the 1990s. While the mandatory sentencing of LWOP is banned, the practice of sentencing adolescents to life sentences is still in practice. Juveniles may receive a sentence of 100 years, which will keep them incarcerated until their natural death or continually be denied parole, yet again confining them until natural death behind bars.

Montgomery v. Louisiana (2016)

A series of Supreme Court decisions in the 2000s began the process of ruling LWOP as unconstitutional for future sentencing and reversing past decisions. In 2012, *Miller v. Alabama* concluded that LWOP was unconstitutional youth offenders, even those who had committed murder as a juvenile. In Michigan, *Montgomery v. Louisiana* ruled in 2016 that the *Miller v. Alabama* ruling should be applied retroactively (Siegel & Husseman, 2020). In the 1980s, the belief that adult crimes should be met with adult time opened the threshold for an increase in adolescents sentenced as adults and placed in adult prisons (Siegel & Husseman, 2020). At this time, over 50% of juveniles sentenced to LWOP on their first criminal conviction (Siegel & Husseman, 2020). It is also important to acknowledge that over 70% of convicted were racial minorities (Siegel & Husseman, 2020). In 2005, the United States Supreme Court had begun to limit LWOP, and adult sentences placed on juveniles. This reduction was made to increase the research on the differences in the adult and adolescent brain (Siegel & Husseman, 2020). The areas of difference considered included decision-making abilities and judgment. With the passing of *Roper v. Simmons* in 2005, 72 juveniles were taken off of death row with the repeal of the death sentence for juveniles (Siegel & Husseman, 2020). *Graham v. Florida* in 2010 banned LWOP for juveniles, citing, that they were less deserving of the most severe punishments as they will likely serve more time than their adult counterparts (Siegel & Husseman, 2020). The question remained as to whether there should be a retroactive application of the decision. The Supreme Court resolved this issue in 2016. Before 2016, states like California, Florida, Louisiana, Pennsylvania, and Michigan, who also held the largest juvenile populations with LWOP decisions, decided to reform retroactively (Siegel & Husseman, 2020).

Retroaction application is positive, but the retroaction on decisions is slow in resolution and still seeks an LWOP. Project Reentry was a direct response to the Supreme Court decisions

in the Miller and Montgomery cases. Before this project, mitigation had been sporadic at best (Siegel & Husseman, 2020). The main concerns were to provide an appropriate amount of transition support, including transportation, financial assistance, and help to complete any legal documentation (Siegel & Husseman, 2020). The project also emphasized the need for emotional and mental health support during this crucial period.

Application of Montgomery v. Louisiana

The use of mitigating factors came into play in finding alternative sentencing for juveniles due to Montgomery v. Louisiana (Dunn, 2016). Youth itself was considered a mitigating factor. Based on research, young adults lack the rationale needed to understand long term consequences and responsibility associated with the severity of the crimes committed. It became clear that adolescence is a time of transition, and it is unduly harsh to punish them for up to sixty years after they committed the original crime as a child (Dunn, 2016). Culpability is a construct of a society's norms. Therefore, it does not hold any real objectivity. At the moment, specifically at the time of these Supreme Court cases, there is no measurable factor determining the amount of guilt one possesses. Because of this, legal decisions need to be made to protect often demonized groups like juveniles or people of color (Dunn, 2016). In this time frame, lawmakers have to reverse the damage caused to get stringent laws enacted during the 1990s. The push for reform can lead some to believe that those pushing for change are soft on those committing crimes.

Aftermath of Supreme Court Decisions

The trio of Supreme Court decisions after 2010 reiterated the trauma that occurs with juveniles incarcerated and the understanding that over-sentencing does not make a difference in juvenile crime. Amnesty International and The Human Rights Watch reported that juveniles

accounted for 11% of homicide offenders (Benekos & Merlo, 2019). Ten years later, this only dropped by 1% despite the tough on crime initiative presented during the 1990s (Benekos & Merlo, 2019). The lack of a decrease in juveniles' violent crimes during a time of harsh sentences further illustrates the difficulty in addressing appropriate responses to juvenile crime. Coming off of the Supreme Court decisions, Robert Listeneer testified before the Senate Judiciary Committee in 2014 to emphasize the need for all states to create prevention programs from evidence-based research on trauma-informed developmental needs of youth (Benekos & Merlo, 2019). Those hoping to stop the cycle of soft and harsh punishments have to acknowledge that the political climate and negative media attention on youth offenders affect the American people's sentiment. Each of the four cases ruled in favor of treating juveniles differently than adults due to developmental growth, but all decisions were close (Benekos & Merlo, 2019).

Fiscal Concerns

Fiscal concerns play a factor in introducing rehabilitative services for those incarcerated or are in transition to the community. Programming is reserved for those who will be let out, eventually leaving no opportunity for those who are still sentenced to LWOP (Nellis, 2012). For juveniles, this has meant a lifetime without services. *Graham v. Florida* in 2010 gave these juveniles a chance for freedom. Unfortunately, the decision can go back and provide years' worth of services that will benefit them as they plan to reenter society. The Supreme Court required, with their choices, that housing of juveniles be considered for their safety and security. Youth that may be seen in adult courts for resentencing should not have their lives put in danger daily due to the psychological and physical differences they exhibit from adults (Nellis, 2012). In LWOP decisions, a disproportionate number of juveniles have experienced socioeconomic hardship and violence in childhood, contributing to a higher chance of criminal involvement. The

American Law Institute has suggested lawmakers and juvenile justice members take a closer look at juveniles who have served a ten-year sentence. Financially, reintegrating inmates back into the community at the ten-year mark would save over 1 million dollars. The money saved could be funneled into juvenile intervention with vocational training, parenting skills programs, substance abuse treatment, and other programs that have been proven.

Adolescent Brain Development

During adolescence, it has been discovered that there is a surge in reward-based motivation. Juveniles have a neurobehavioral system tempered by a dopamine system (Walstrom, Collins, White & Luciana, 2009). This system has been well documented from a neurological standpoint but not necessarily from a developmental or behavioral view.

Adolescence is a time for children to assert their independence, leading to progressively more adult-like behaviors.

Basic Understanding of the Prefrontal Cortex

To transition to adulthood, risks are taken, and new and unique situations are sought (Walstrom et al., 2009). Each activity increases neurotransmitters to increase function to produce the dopamine associated with this fun and sometimes risky behaviors (Walstrom et al., 2009). Neurochemistry is modified if adolescents are experiencing over activity or under activity in the neurotransmission. This activity occurs in the prefrontal cortex, most notable for its executive functioning role, including goal setting, attention, and consequences (Dahlitz, 2017). A reduction of interconnection between neurotransmitters has been observed in individuals diagnosed with a mental disorder, those undergoing extreme stressors, and those currently incarcerated (Dahlitz, 2017). Adolescents and even individuals in their twenties are more likely than adults or children to seek risky situations (Steinberg, 2017). Risky behavior tends to peak in

mid-adolescence but can vary depending on the specific action. This same pattern is found in crime involvement, both violent and nonviolent (Steinberg, 2017). While crime has shown to oscillate through time and vary among countries, it remains steady in terms of age (Steinberg, 2017). Psychologically, the study of the adolescent brain and its development is useful in recognizing the increased likelihood of criminal behavior regarding age. Again pleasure or sensation-seeking behavior rises at the onset of puberty and continues into the twenties. Sensation seeking is different from risky behavior, also seen in young children. The emergence of self-regulation marks adolescence. However, self-regulation is relatively low (Steinberg, 2017). Self-regulation regulates thoughts, feelings, and actions centered around a planned activity (Steinberg, 2017).

Role of Brain Development in Juvenile Justice

Society does not expect children to become criminals or engage in criminal activity. So when it does occur, it can create a dilemma around what actions can be taken. In the 20th century, the federal government chose to redefine criminal behavior, referring to it as delinquency and acknowledging the needs of a child as separate from an adult offender (Steinberg, 2017). In theory, rehabilitation has precedence over punitive action. Maturing adolescents should be protected by a system that otherwise hands out punishment. Despite acknowledging chemical differences in the brain, the 1990s projected juvenile offenders as super predators tearing apart neighborhoods. Current research in adolescent brain development has increased awareness that normal adolescent development may lack the competence needed to be seen in a criminal setting (Steinberg, 2017). This understanding has led to protection during interrogation and the transfer of juveniles out of the adult system. Young adulthood is critical in developmental milestones, social relationships, mental health, and psychosocial maturation. Incarceration can cause a severe

disruption in developmental functioning possibility resulting in continued criminal involvement (Steinberg, 2017).

Introduction to Mitigation

According to The California Legislature, the role of sentencing is to provide public safety through restorative justice by punishment and rehabilitation. Sentencing can be lengthened through enhancements or aggravating circumstances. Examples of both include gang membership and the use of a weapon (Bagaric, Wolf & Isham, 2019). On the other end of the spectrum, mitigating factors or circumstances can cause the court to strike down additional punishments or lower sentencing times. California mitigation factors are placed in two categories: factors related to the delinquent action and factors related to the individual in question (Bagaric et al., 2019). Mitigation is a resource for defense attorneys that humanizes the client. The report is not to provide an excuse for behavior, instead, to present factors that are beyond a client's control, including, but not limited to, mental health issues, child abuse, and socioeconomic factors.

Results of Mitigation

The use of mitigation can bring light issues that can affect sentencing and the allowance of record expungement at the age of eighteen. The problem of automatically having a record expunged for youth is necessary as adjudication for delinquency, and most importantly, for a felony, can limit a juvenile's future (Puzone, 2016). A child may not gain employment in areas like the military, law enforcement, or even firefighting (Puzone, 2016). A juvenile under the age of eighteen may be impacted by his delinquency record when he or she attempts to return to their academic career. Their future academic career may be significantly stunted by a lack of access to scholarships or student loans. The majority of youth facing delinquency charges are more often

than not in socioeconomically deprived situations, have mental health concerns, and have been victims of some form of abuse, including physical, sexual, or emotional (Puzone, 2016). These situations place youth at a higher risk of engaging in delinquent behavior (Puzone, 2016).

In a society that requires everyone to pull themselves up by their bootstraps, delinquent youth are significantly limited in the ability to do that for the rest of their lives. The use of mitigation opens up the possibility of lowering recidivism. It can benefit society in the long run. By refusing to acknowledge the mitigating factors in a youth's life, society is, in effect, violating the Eighth Amendment that prohibits cruel and unusual punishment (Puzone, 2016). It cannot be said enough that mitigating factors are out of the youth's hands, acknowledging that mental health status and environmental factors can leave a child more likely to engage in delinquent behavior (Puzone, 2016). These factors should be considered when addressing the issue of expunging a juvenile record. Children are not accused of crimes; instead, they have engaged in delinquent acts. The subtle difference in wording is essential in refocusing a system that has primarily been punitive (Puzone, 2016).

Mitigation Use for Alternate Placement

The hope is to move away from superficially promoting a rehabilitative system. Instead, allow adults formerly prosecuted as juveniles to lead a life free from the mistakes they had made. Mental health concerns, abuse, and environmental factors in a juvenile's life are not excuses in a traditional setting, but a chance to explain youth behavior (Puzone, 2016). The third category of mitigating factors can be addressed. This category includes any other circumstances that relate, within reason, to the defendant or the circumstances in which the crime was committed (Bagaric, Wolf & Isham, 2019). There can be an almost innumerable amount of information available to prove the juvenile is more than their offense. In current California criminal cases mitigating

factors are weighed against the aggravating factors previously mentioned. If the factors equal out, the juvenile will be sentenced to a medium length term (Bagaric, Wolf & Isham, 2019). An example of this medium length term can be seen in the ruling of *People v. Bolt*. Bolt's mitigating factors were the trauma he received from his abusive childhood. Bolt was also cooperative and admitted full culpability (Bagaric, Wolf & Isham, 2019). Bolt's aggravating factors included the molestation he imposed on a child over six years. The aggravated crime and the substantial mitigation allowed the judge to choose a medium sentence for Bolt (Bagaric, Wolf & Isham, 2019).

In theory, childhood neglect or abuse should carry a lot of weight with it, but realistically these mitigating factors are given little weight in sentencing. Youth that have suffered from abuse have been shown to act out with violence leading to lawbreaking behavior from a perceived threat (Puzone, 2016). A disproportionate amount of female youths in the juvenile system have been victims of abuse, specifically sexual abuse. Being a survivor of abuse often leads to a diagnosis of various mental health concerns, including post-traumatic stress disorder (Puzone, 2016).

When carrying a felony, a child's future can be significantly affected if the charges are taken at face value. Using the preventive law model, a focus would be appropriately placed on rehabilitation without crippling punitive measures (Puzone, 2016). This model wishes to incorporate the humanitarian tools of health and healing into the current system of law (Puzone, 2016). Currently, the therapeutic jurisprudence and the law system are not inconsistent in their goals for youth offenders. Youth offenders are primarily asked to invoke their right to remain silent, which impedes their input into the process around them (Puzone, 2016). Allowing youth offenders to share their stories of mitigating factors can push the system back into a place of

rehabilitative focus. With the Supreme Court decisions around life without prison for juveniles, they have acknowledged that harsh punishments are not beneficial for those whose brain development is still in progress (Puzone, 2016).

The current progressive approach to reforming the juvenile justice system may not be demystifying delinquent behaviors in children; instead, it prevents the expansion of the public's belief system around reform (Cox, 2019). By acknowledging the mitigating factors of a child's life, including trauma in their early life and through the incarceration process, delinquent behaviors can be used to incorporate healing rather than punishment. Current theories about the inappropriateness of young children being placed in an institutional setting can be utilized to further push for a more appropriate location (Cox, 2019).

Trauma Informed Mitigation

Trauma is not a new concept, but the acceptance of its importance is. In the 1980s, Post-traumatic stress disorder (PTSD) was introduced into the Diagnostic and Statistical Manual of Mental Disorders (DSM) (Welch, Butler & Gertz, 2019). The term trauma was then used regularly to describe neglect and abuse experienced by young people (Welch et al., 2019). The role of interjecting mitigating factors into a young person's defense provides a more humanistic picture of that individual. The experience of trauma links youth offenders to Holocaust survivors and veterans of war. The disconcerting experience will strain relationships, upset emotions, and cause physical reactions.

Unfortunately for young offenders, trauma does not stop at the time of the arrest. In 1985 an article in Pediatrics noted that offenders placed in juvenile institutions and exposed to violence or injury were further traumatized (Welch et al., 2019). It took until the early 2000s for literature to begin to address that certain groups of youths in the system are more susceptible to

PTSD and mistreatment (Welch et al., 2019). In 2010 the Office of Juvenile Justice and Delinquency Prevention published a guide for judges to address the connection between trauma and delinquent behavior, specifically in young girls (Welch et al., 2019).

After this publication, a dialogue emerged discussing the trauma to youth before incarceration and the damage to those individuals if that trauma is left untreated (Welch et al., 2019). This issue is especially critical for young people as unaddressed trauma at a young age increases the likelihood of redirection of cognitive functioning and impairment of psychological functioning (Welch et al., 2019). Misunderstanding trauma may lead some to believe that young offenders are victims of their families. While this in a sense is true, their removal from the family and placement in an institution is not a constructive solution. Addressing the mitigating factors of trauma can lead to appropriate treatment out of a jail-like setting, whether it be home or alternative placement. An example of a trauma-informed alternative arrangement is the Sanctuary model put in place in New York state (Welch et al., 2019). The Sanctuary model offers a more humanistic approach to treatment. This model can include everything from a change in lighting to a broader refocus away from punishment (Welch et al., 2019).

A child who has experienced trauma has been compromised in their developmental stages. Trauma-affected development is somewhat in opposition to the idea that all adolescents have underdeveloped brains, leading to delinquent behaviors. However, this viewpoint can be seen as a middle-class viewpoint that stands by the thought that there is a standard and appropriate way to move through the developmental stages, from a troubled adolescent to a law-abiding adult (Welch et al., 2019). This belief does not consider that the environmental factors surrounding a young offender can be vastly different. A young offender has likely been washed

over with systemic, cultural, and socioeconomic factors that have framed the likelihood of their delinquent actions.

Children who are not raised with a guiding hand or raised with a supportive parental figure are at a greater risk of engaging in delinquent behavior. Despite this, acknowledging Adverse Childhood Experiences (ACES) has led many in the current legal system to shy away from addressing the culpability a youth can have (Bagaric, Wolf & Isham, 2019). The fear is that acknowledging ACES is a justification for delinquent behavior. This fear is so intense that the Federal Sentencing Guidelines state that a lack of proper role models should not be included as a mitigating factor (Bagaric et al., 2019). Despite this, approximately half of federal judges overseeing juvenile cases believe that lack of guidance should be considered when reducing a sentence (Bagaric et al., 2019). Lack of direction is challenging to demarcate effectively, making it difficult to address from a mitigation standpoint. But it can be used to establish other issues, including abuse and mental health issues. Juveniles' emotional and mental state is more concrete and measurable, making them appropriate mitigating factors in sentencing (Bagaric et al., 2019). Empirical evidence states that youth who have experienced trauma are at risk of engaging in harmful behavior, criminal or otherwise (Bagaric et al., 2019). Using childhood abuse consistently as a mitigating factor in cases where it has been proven can benefit juveniles who are female, in low socioeconomic backgrounds, and likely persons of color (Bagaric et al., 2019).

While the rehabilitative process does need to address public safety and justice, if the focus is only on crime prevention, young people, specifically those with stress-filled environmental factors, will suffer (Welch et al., 2019).

Juvenile Reform in Other Countries

A study completed in mid-Atlantic states addressed both the attitudes and responses of juvenile facility workers (Kras, Dmello, Meyer, Butterfield & Rudes, 2019). Juvenile institutional workers often struggle with understanding the need for rehabilitation instead of the well-ingrained punitive nature of institutions. The understanding of a broken system has been acknowledged by both those in juvenile and adult facilities. Many workers may experience a conflict between the competing ideologies in their treatment of inmates and their belief that facilities may not be providing enough punishment to deter criminal acts (Kras et al., 2019). These feelings do not solely belong to facility workers. Probation officers also experience the pull and push of working within a system that does not emphasize rehabilitation. Probation officers' hands are tied by a system that operates on the need to provide regulation instead of developing a supportive partnership (Kras et al., 2019).

The need for juvenile client empowerment is emphasized in European countries as well. A study of young programs in Chile, Sweden, and Italy examined using the Victim Offender Mediation (VOM) model to assist juvenile offenders (Donoso, LaBrenz, & Reyes-Quilodran 2017). VOM is a juvenile justice model that replaces the court system's use using mediation for most criminal offenses (Donoso et al., 2017). VOM provides an alternate approach to a traditional emphasis on the locus of control. External elements have been acknowledged, including poverty, maltreatment, forms of abuse, and the vulnerability of the community of origin (Donoso et al., 2017). The focus of VOM goes above the actual mediation and promotes accountability and empowerment of all parties involved (Donoso et al., 2017). Chile has explicitly sought to extend empowerment and accountability beyond the juvenile criminal system and the state. Chile was in the process of recreating their government to a more democratic state during the time of this research, which calls for the themes common in the promotion of

rehabilitation in the juvenile criminal system (Donoso et al., 2017). An essential element that helps shift the focus from one of the punitive measures is employing staff that shares the agency's belief system. Juvenile workers can align their ideals with a strategy with goals beyond incarceration, a system that presents a favorable climate.

In Italy's use of the VOM model, juvenile workers addressed the need for adverse childhood experiences (ACES) or psychosocial risk factors that mitigate the juvenile's needs (Donoso et al., 2017). More importantly, identifying and acknowledging these factors can help decrease recidivism, especially in a new program (Donoso et al., 2017). The family's role in juvenile intervention was especially crucial in family-based countries like Italy and Chile. California, like these countries, has a large population that is family-based. The family unit can help juvenile workers promote individual empowerment, thereby creating a partnership between the family unit and juvenile. Researchers found that VOM was more successful when proper training was given in mediation tactics. Youth advocacy was promoted, and the community was included even at the level of policy and procedure development (Donoso et al., 2017). One possible method that can help reduce juvenile incarceration is providing another arena beside the court system. Offering a course of mediation, juveniles with less severe offenses would not have to be exposed to the trauma of incarceration. They will be provided with an education on the environmental factors that have affected their likelihood of offending. With that understanding, juvenile offenders have the opportunity to empower themselves and reduce the chance of reoffending.

Progress in Northern California Sentencing

San Francisco has recently begun to shut the doors of their juvenile facilities resulting in an 81 percent drop in juveniles being held (Macallair, Males & Washburn, 2019). The actual hall

is currently only at 25 percent capacity. The city now has the unique opportunity to redirect the resources that they had previously funneled into juvenile hall into community services for delinquency intervention. As with most juvenile populations, San Francisco has three groupings of individuals: detained youth, out of home youth requiring placement, and probation violations. A small portion of these groupings remains detained longer than two days, having more severe charges. Rather than risk the possible traumatization of youth with less severe charges or those awaiting placement, San Francisco creates individualized plans for juveniles that keep them in the community and still connected to resources (Macallair et al., 2019).

The city has been able to close their juvenile hall as of late after several decades of creating community program connections allowing them to do so. Under the guidance of the Center for Juvenile and Criminal Justice (CJCJ), San Francisco is continuing to address the needs of all populations, specifically, those juveniles that require more than a two day stay in custody (Macallair et al., 2019). Leaders have an opportunity to design and implement a program that will serve juveniles' needs without incarcerating them for any period. Community connection is a critical factor in the development of a plan for transition out of incarceration. Youths, especially those that have only been incarcerated due to the need for out of home placements, can have the option of bypassing this system altogether. Funding for incarceration in juvenile justice facilities must be transferred to programs based in the youth's communities. The resources will need to work together and not fall into the trap of operating within a silo as it only hinders the juvenile's success.

CHAPTER 3: REFLECTIONS, CONCLUSIONS, AND RECOMMENDATIONS

A proposal was drafted to ensure the regular use of mitigation reports for JLWOP cases in Fresno County. The project proposes that Fresno County will hire an additional social worker with a Masters in Social Work from a licensed institution of higher learning to complete the mitigation reports required for the resentencing of juveniles previously sentenced to life without parole. According to the National Association of Social Work (NASW) guidelines, an individual who has achieved a Master's in Social Work is operating within their legal scope of practice when completing the requirements for a mitigation report. It is recommended that this staff member fully integrate into the defense social work department in Fresno County's Public Defender's Office to provide education to current and incoming staff in the discipline of defense social work, the use of evidence-based practices, and assisting in the integration of department written mitigation reports for adult and juvenile clients. In the Appendices are documents that will help with the education of the multidisciplinary team on the discipline of social work. Regular training on the possibilities of defense social work will be provided, with additional exercises initiated when new staff is hired. An updated referral will offer a clear understanding of all types of tasks defense social workers can assist with and complete.

Project Description

This project began in August of 2020. The Fresno County Public Defender's Office had placed a social worker on the Juvenile Justice Campus (JJC) in Fresno, California, only a month prior. After agreeing to the project, I was placed as an MSW intern in the defense social work department and placed at the JJC. The pandemic did not show any signs of slowing, which limited my access to the campus and any juvenile clients. Being prohibited from meeting with juveniles housed at the JJC slowed my progress in exploring mitigating factors, meeting with

attorneys, and researching available services which are needed for re-entry. It is also important to note that because the placement of defense social workers at JJC was brand new, the role of social workers on a multidisciplinary team was not clear. Much of the first semester of the internship was used to explore program development, outline the defense social worker role, and insist that social workers were invaluable in creating the best client defense.

In January of 2021, I was placed at the Crocker building, which allowed me to work with Jessica Williams, a defense social worker. Mitigation was slowly being offered for adult clients, and I was allowed to assist in the writing of mitigation reports. Together we developed a template for mitigation reports which included demographics, childhood, education, adulthood, relationships, mental health, medical history, employment, ACES, assessment, strengths, and recommendations. This template is being used for several mitigation reports. After researching mitigation use for the second chapter of the project, I concluded that an MSW affords the writer of a mitigation report the ability to conduct an assessment based on the scope of practice legally. The exposure to various theoretical frameworks and the education on how to operate and use evidence-based research allows an MSW social worker to make a more comprehensive look into a client history available in a mitigation report.

Discovery

Mitigation reports provide a comprehensive set of insights into the life of an individual that does not excuse the execution of a criminal act, instead offering a collection of factors that affected the emotional and cognitive growth that led to beliefs that there is no alternative path or hope for a positive life outcome. While juvenile adjudication is currently on a track that promotes rehabilitation, it has yet to leave behind altogether its history of evoking harsh punishment. Positivist criminology and, more specifically, the biological criminology theory

explores the causation of criminal action and discards the overuse of discipline rather than promoting treatment for juveniles. Evidence-based research rooted in positivist and biological criminology explores biological and psychological factors, often linked to biological makeup, which can visibly show the difference in brain functions of those who commit violent crimes and those who do not (Ling, Umbach, & Raine 2019). While further research needs to be conducted to solidify this information into the rhetoric of criminologists, the data has still proven valuable in the creation of mitigation reports. This project's primary focus is to provide a guide for regular integration of mitigation into the resentencing of clients who have had their JLWOP sentencing overturned. However, the Public Defender's Office can adapt mitigation use into the regular rotation of public defenders who need a guide to determine appropriate sentencing. Judicial sentencing has attempted to leave behind 18th-century practices of regularly housing juveniles and adults together, although children still fear being transferred to adult courts for sentencing. Because of this, mitigation presents a client's history of ACES, possibly physical or mental disabilities, to explain criminal acts. The Fresno County Public Defender's Office can use personal client history in resentencing and record expungement for clients.

One of the most vital benefits of mitigation is its exploration of a client's adolescence. Adolescence is a time of exploration of one's individuality, creating a belief system, and developing critical thinking skills. Children can thrive in investigating their environment and social structure with adequate support and nurture from caregivers. Unfortunately, a history of drug use, violence in the home, poverty, and lack of a supportive community network can derail a child's path, leading them into the juvenile justice system. A defense social work department can provide a comprehensive guide to a client's history, explaining the roots of criminal activity and how a supportive network can offer a successful transition into the surrounding community.

Conclusions

The impact of this project includes raising the standards of operation, creating expert witnesses and in-house reports that are held to a high standard both by the NASW and the courts. Based on the scope of practice introduced by the National Association of Social Work (NASW), social workers with a Masters in Social Work (MSW) can conduct biopsychosocial assessments of individuals. The assessment portion of a mitigation report provides an analysis of the history of an individual, which can give insight into their life and indicated criminal acts. Current social workers do not possess a Masters in Social Work, limiting the production of mitigation reports to be used in a judicial court setting. According to financial statements, the Fresno County Public Defender's Office spent \$5,350 on outsourced mitigation reports in 2020. With the average salary of a social worker with an MSW being \$72,550, long-term data collection will have to be completed to determine if an individual's employment with an MSW is beneficial. Factors to consider will be the number of mitigation reports written and requested, the ability to use social workers as expert witnesses in court to defend data used, and the number of years removed from sentencing.

Supporting Data

In 2019, Defense Social Workers included the tracking of Prison Term (years and months), Place of Commitment (CDC or LP), and Prison Time Saved (years and months) through a collaborative data collection project with Dr. Crawford at California State University, Fresno. Based on research gathered in 2019, the defense social work unit ended the year with 407 referrals for alternate sentencing reports from the adult unit, primarily for substance use concerns. With alternate sentencing reports, 628.4 years were removed from the final sentencing from the judge. In total, this has saved approximately 6672 days.

Project Challenges

Current challenges for introducing mitigation reports for JLWOP cases are the lack of everyday mitigation report use by the department and the slow acceptance of reports created by the defense social work department. A PowerPoint has been designed to be used to educate nonsocial work staff in the role of defense social workers, their governing body, and the theories used in practice. The PowerPoint will be introduced to the current team and presented monthly to incoming staff. Education will be provided to break the barrier that currently slows more multidisciplinary teamwork, specifically in-house mitigation reports.

Reflections

As I reflect on the past year, interning at the Fresno County Public Defender's Office and creating a project for them, I can see the growth I have made. Defense social work can be a polarizing discipline. People often find it easier to side with the alleged victim of a criminal act. When asked to work with an alleged perpetrator or a convicted perpetrator, social workers may find difficulty speaking with, providing therapeutic interventions, or offering mitigation due to the nature of the crime or because that perpetrator has already admitted guilt. My placement required that I take an individual standing on how I addressed each client. I explored my personal history and previous work with disabled and incarcerated individuals to develop a philosophy for defense social work. I believe that each individual I have the privilege of interacting with had a life before and will have a life after me. Often, like me, their lives have been filled with decisions, often misguided, resulting in harsh consequences. It is my obligation as a defense social worker to use this information to help the client find a way out through rehabilitation.

Recommendations

Appendices A & B provide a timeline and an executive summary of recommended actions for the Fresno County Public Defender's Office to consider. Expanding their defense social work department to provide legally sound in-house mitigation reports to assist former JLWOP individuals in resentencing.

Staffing

- Add a defense social worker with a Masters of Social Work (MSW) to assure that are mitigations reports are being written within the designated scope of practice.
- Integrate the MSW defense social worker into the defense social work program to assist in developing mitigation reports and advanced ASR reports. The MSW defense social worker can provide evidence-based research and additional theoretical frameworks for clients' interactions, including but not limited to interviewing report creation and therapeutic interventions.

Mitigation Reports

- Use of the Biological Criminology Theory as the basis for mitigation development. The implementation of this particular theory allows the writer to provide evidence-based research on the long-term effects of ACES and the growing knowledge that adolescent brain development plays a role in comprehending and completing a criminal act.
- The mitigation example provided in Appendix C can be distributed as a reference for standard information needed and how to seamlessly integrate research into a report.

Establishment of the Defense Social Work Program

- To further adhere to a multidisciplinary approach to client care, staff will briefly introduce social work philosophy, national guidelines, and abilities.

- Collaborative investigative work with the Fresno County Public Defender's Office Investigative Unit further solidifies the validity of the mitigation reports' information.
- Development of a Re-Entry program to aid in decreasing recidivism in both the adult and juvenile offender populations. Re-Entry will address concerns with available resources for housing, financing, transportation, and continuity of psychological care to prevent possible relapse, loss of hope, and fear of re-arrest.

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Appendix A

Executive Summary



Executive Summary



Professional

Hire: Seek out and hire an individual with a Masters of Social Work who can develop mitigation reports at the quality needed.



Evidence-Based Research

Create: Integrate the Biological Criminology Theory in the Defense Social Work Department to employ concepts like ACES.



Multidisciplinary Approach

Integrate: Educate all facets of the Public Defenders Office on the unique approach of client based social work. Let the empowerment theory based social work team assist in decreasing recidivism & increasing client change.



Equity

Change: Defense social workers can explore the intersectionality of gender, race, ethnicity, religion & sexual orientation, which can result in unique experiences, opportunities, & barriers.



Growth

Establish: Increase in use of in-house mitigation reports will establish social workers as reliable & competent professionals who can be used as expert and witnesses.



Re-Entry

The next step: An MSW defense social worker can develop a re-entry program for all clients, including former JLWOP cases, to return to the community with the needed resources, skills & confidence to thrive.

Implement



Professional

- Add an MSW Defense Social Worker to undertake the mitigation for JLWOP
- Provide mitigation samples to promote an increase in referrals

Evidence-Based Research

- Provide clients with the ACES handout to increase their comprehension of their importance
- MSW Defense Social Worker will provide guidance for inclusion of research in regular assessments

Multidisciplinary Approach

- Social Work Department provides regulate training on social work concepts including theories, assessment types and statistics related to recidivism

Equity

- Creation of handbook that discusses the unique challenges faced by LGBTQ+ members who are institutionalized
- Offer therapeutic services based in Cognitive Processing Therapy for juveniles involved in the justice system

Intersectionality

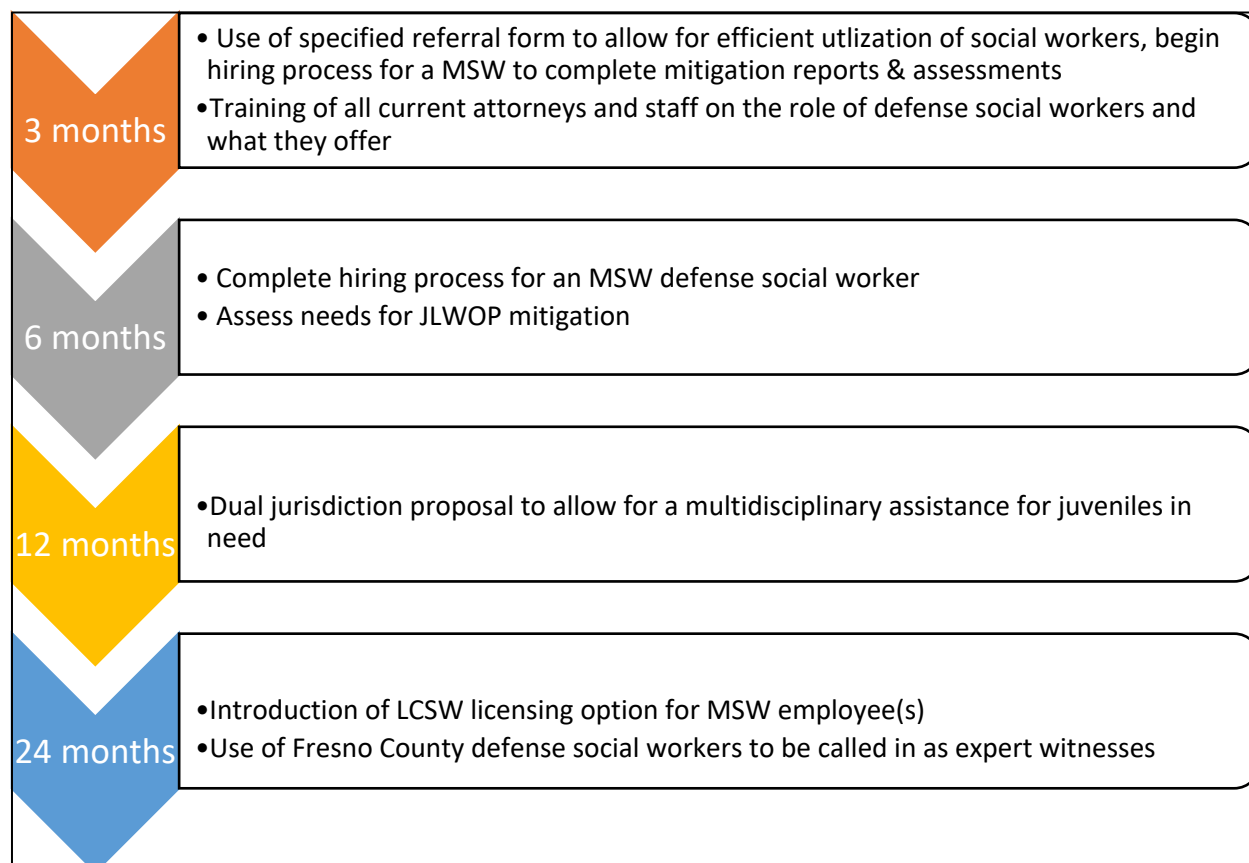
- Conduct surveys to identify difficulties that clients face surrounding topics of race, sexuality and complex trauma
- Offer regular trainings for staff in areas of complex trauma, ptsd, grief and loss

Unconscious Bias

- Monthly department meetings to ensure staff are self aware of individual biases.
- Random assignment of clients allowing social workers to address previous feelings of fear or discomfort

Appendix B

Proposed Timeline



Appendix C

Mitigation Report sample



COUNTY OF FRESNO

Elizabeth Diaz

Public Defender

Client: [REDACTED]

Date of Birth: [REDACTED]

Counsel: [REDACTED]

Case Number: [REDACTED]

**The following information is based upon interviews with, the client, family members, records and current research in the field.*

Childhood

██████████ was born on ██████████. He is of Hispanic descent. ██████████ was raised by his mother and stepfather in Fresno, California, along with his three older sisters, one older brother, and two younger brothers. As a child, ██████████ knew only that his biological father used illegal substances and was incarcerated when ██████████ was five years old. His stepfather started a relationship with ██████████ mother when ██████████ was six years of age. ██████████ is of small stature and was often picked on as a young child. To survive in his neighborhood and avoid being harmed, ██████████ learned that he needed to fight to prove that he was tough. ██████████ mother emphasized that he should not show emotion, specifically sadness or fear. He believes this is a cultural idea that is rooted in his mother's Mexican heritage. ██████████ felt pressure from his culture to be a tough man who did not cry. ██████████ small size did not ward off the bullies, so he aligned himself with the biggest kids to get respect. ██████████ stepfather showed him how to fight so that he could survive in their neighborhood physically. His stepfather is an active member of the Bulldog gang, and ██████████ believes that he was training him to eventually become an active member of the gang. ██████████ recalls vivid memories of seeing his stepfather leave and begging to go with him. ██████████ stepfather would refuse to let ██████████ join, stating that it was not right for him to come. ██████████ said that he was upset to the point of crying because he knew that his stepfather would be leaving to engage in unlawful activities. His stepfather promised each time that he would be back but would end up breaking that promise every time. ██████████ cried as he shared the constant stream of broken promises made by his most prominent role model.

██████████ states that it was often just him at home because his older siblings all chose to move away in their late teens. ██████████ was placed in foster care for two weeks while his

mother has hospitalized during pregnancy with his younger brothers. [REDACTED] stated that he required placement because there were no family members able to provide appropriate care at that time. His stepfather was incarcerated, and his siblings were able to stay with other family members. Unfortunately, [REDACTED] recent and high-risk Type 1 Diabetes diagnosis forced him to be placed in a foster placement.

[REDACTED] mother spoke of his kind nature as a child. She stated that when she was having a bad day, [REDACTED] would tell her to take a walk or relax, and when she returned, he would have cleaned the house to "look just like a hotel." Even as an adult, [REDACTED] has continued to be there for [REDACTED]. He is her primary contact if she has any medical concerns. [REDACTED] cried at the thought that her son could be gone for a long time as she, his wife, and his children depend on him. When asked to describe her son, [REDACTED] stated that he was a good boy that got into trouble but was not a bad man at heart. [REDACTED] is proud of his younger brothers and still maintains a relationship with both of them. When asked if his younger brothers had tried to follow his lifestyle, [REDACTED] stated that he refused to let that happen. He told fellow gang members that they were not allowed to jump in either of his brothers. During the periods that [REDACTED] was not incarcerated, he made a point to provide parental guidance to both siblings. He insisted that they learn how to use tools, provide for their family, and stand up for themselves.

History of Incarceration and Drug Use

[REDACTED] was jumped into the Bulldog gang at thirteen. His stepfather did not encourage or agree with [REDACTED] joining the gang. However, [REDACTED] states that his stepfather spoke to him from prison and emphasized that the decision to join was [REDACTED] and no one else's. Within the same year, he began to use alcohol and marijuana. He would obtain both substances from friends daily. [REDACTED] states that the substances made him happy. He was placed in

Juvenile Hall at the age of fifteen for theft and assault. [REDACTED] continued to engage in fights and robbery and was placed in prison at the age of eighteen. At this time, [REDACTED] was exposed to methamphetamine and began regular biweekly use. [REDACTED] was also provided with pain pills by friends and used biweekly. When [REDACTED] was diagnosed with carpal tunnel, age unknown, he began to use his prescribed pain medication regularly.

Education

[REDACTED] completed his grade school education in his [REDACTED] neighborhood. By the age of five, [REDACTED] recalls being bullied for his small stature. He states that he understood that he needed to make friends with the most intimidating children to defeat those who mocked him early. When diagnosed with Type 1, Diabetes, [REDACTED] felt proud of being the only child to take insulin injections but quickly became embarrassed around other children. [REDACTED] then began to go to the nurse's office to avoid the stigma with other children. His mother was often frustrated with him because she would have to leave work to pick him up from school. [REDACTED] states that he did not confide in his mother about his anger and social anxiety about the other children knowing about his diagnosis and his need to inject himself. [REDACTED] completed his 11th grade education but did not complete a GED program. He primarily attended school while in Juvenile Hall but could not continue when in prison because of his misconduct.

Medical History

[REDACTED] was diagnosed with Type 1 Diabetes at eight years of age. He stated that his mother noticed that his eyes were turning purple, and he was drinking an excessive amount of water. [REDACTED] was transported to Valley Children's Hospital for treatment. During high school, [REDACTED] reports that he had begun to stop taking his insulin shots for two days at a time out of rebellion. Before his last incarceration, he noted intense foot pain from foot ulcers. All

diabetic patients can develop foot ulcers, which commonly occur on the balls of the feet and under the big toe. Foot ulcers result from skin breakdown causing the pain to travel into the bones (Cleveland Clinic, 2018). If they are not treated, they can lead to low blood flow, infections, and possibly amputation (Cleveland Clinic, 2018). [REDACTED] recalls a time he asked to leave work to go to the doctor for his foot pain. The emergency room he attended stated that they could not see anything despite [REDACTED] statement of pain. As foot ulcers develop, they may not initially be visible, making them all the more dangerous (Cleveland Clinic, 2018). [REDACTED] then scheduled a doctor's appointment and reemphasized the problem. He was prescribed pain medication. Varying glucose levels can exacerbate foot ulcers, which can lead to a loss of feeling in the feet (Cleveland Clinic, 2018). [REDACTED] states that he has tried to maintain healthy glucose levels, but a lack of training and understanding has led to his difficulty doing so. He was diagnosed with carpal tunnel after eighteen and was prescribed Gabapentin 300mg 3-4 times daily. [REDACTED] is not currently on this medication.

[REDACTED] was prescribed Norco two to three years ago at two dentist appointments. The appointments were scheduled six months apart, and he received a 30-month medication supply each time. [REDACTED] stated that he took two to three pills every two hours.

Mental Health

In his first prison sentence, [REDACTED] was diagnosed as bipolar with acute stress and schizoaffective disorder. [REDACTED] reports mental health concerns, including paranoia, anger, and anxiety as a juvenile, but he did not openly speak of it because he was often teased and bullied for it. The diagnosis has been confirmed through records acquired through WellPath. [REDACTED] states that he is uncomfortable in large groups, often feeling anxious. He has shared that he has had experienced depression and feelings of hopelessness but can perform a self-care routine

to return to a positive emotional baseline. [REDACTED] is currently on Remeron for sleep and can get five hours of uninterrupted hours of sleep per night. During previous incarcerations, [REDACTED] was prescribed Xanax daily. He does not state having any adverse side effects or concerns with this medication. [REDACTED] did not receive psychiatric services as a juvenile. He said that he feared the recourse from other youths.

Adverse Childhood Experiences

[REDACTED] did not know his father well. Both [REDACTED] biological father and stepfather were incarcerated throughout his youth. [REDACTED] did not feel safe confiding his social anxiety and anger in anyone except for the Juvenile Hall's occasional correctional officer. [REDACTED] states that the correctional officers would all leave at some point, so there was no point in getting close to them. When asked where this stemmed from, [REDACTED] recounted incidents with his stepfather. [REDACTED] cried, recalling times that his stepfather would leave him. He knew he was not going to come back because he refused to let [REDACTED] go with him. [REDACTED] understood that his stepfather would then be engaging in illegal activity and be arrested. [REDACTED] stated that this abandonment was overwhelming and further deepened his fear of abandonment. When [REDACTED] was held in Juvenile Hall at fifteen, his biological father was paroled and subsequently passed from kidney failure. [REDACTED] received reinforcement from his gang that he was never to back down. [REDACTED] often felt paranoia in his neighborhood, fearing that drug addicts or rival gang members would attack him.

Adulthood

[REDACTED] was paroled in 2016 and wanted to settle down with his family. He chose to relocate his family to Selma to what he perceived to be a safe neighborhood.

Relationships

██████ met his wife ██████ at fifteen, although he did not start a relationship with her at the time. In adulthood, they met again, and they began to date. ██████ describes ██████ as a person who calms him down and will give him an ultimatum of sobriety. ██████ struggles with this still and is often only able to make it to one month without drug use before relapsing. He states that he does have verbal arguments with ██████, but he has never physically assaulted her. He states that he will run away from his problems, often going to a friend's house. ██████ says that ██████ will often come looking for him and takes him back home.

██████ has two children, one without ██████, but he states that he considers both his. ██████ was also told he had another son and provided for him financially and emotionally until he was told that the child was not his. He has lost contact with the child. ██████ is currently pregnant with ██████ child (sex unknown).

Current Charge

██████ states that he and ██████ engaged in a verbal argument after telling him to wait to get his pain pills from the Rite Aid pharmacy. He was in a lot of physical pain due to the foot ulcers and pressure sores on his foot. He drank heavily and ingested prescription pain medication before choosing to walk to Rite Aid to get his prescribed medication. Once he picked up his medication, he continued to drink alcohol. ██████ picked him and attempted to calm him down, asking him to sit down and relax. ██████ states that he then blacked out. He then recalled waking up in a hospital bed, handcuffed. He was then taken to Fresno County Jail. ██████ says that during this time, he was feeling overwhelming stress. He was trying to provide for his family but was unable to find employment. He stated that he woke up early to apply for

jobs each day, but nothing was working. He attempted to save money for bills but did not want to deny his wife and children of small pleasures, and his savings began to dwindle. December brought on an increased amount of stress as he then felt obligated to buy presents not only for his family but also for godchildren and friends. [REDACTED] held a great fear of being seen as someone who could not provide for his family.

Strengths

[REDACTED] takes great pride in providing for his children. He states that he was employed as a diesel mechanic by [REDACTED] in 2019. His boss is supportive and continues to hold a position for him upon his release. His boss, [REDACTED], and her husband believe [REDACTED] to be a stand-up guy who has already made significant progress. [REDACTED] reiterated that she would continue to keep a job open for him. She notes that they have maintained contact, and she has provided materials for [REDACTED] to continue his education in the field.

[REDACTED] hopes to prevent his children from engaging in gang or illegal activities. He states that he has provided his thirteen-year-old stepson with a positive role model. He has emphasized to his stepson that he can come to him anytime and can share his emotions. [REDACTED] has stepped in to raise the child after the child's father abandoned him. [REDACTED] hopes to relocate to a safe area where he can focus on raising his family. He states that friends in jail support his desire to provide for his family and rebuke illegal activities, including drug use. When asked how [REDACTED] will avoid engaging in illegal substances or activities, [REDACTED] says that moving to Selma keeps him away from negative influences. [REDACTED] states that it is easy to get upset when he is in Fresno and leave for a friend's house. [REDACTED] does not have any friends outside of work. [REDACTED] also states that he has a friend who has also chosen to be family-focused that lives in Kingsburg, Ca. They both go camping or have barbeques with their

families only. [REDACTED] says that he regrets engaging in "stupid shit" as a young adult. He says that at one time, he believed it was "cool," and he enjoyed the respect. But he states that now he knows it was not worth it. He admittedly considers that he can provide a different future for his children, himself, and his wife. [REDACTED] understands that his children are at a crucial age and wants to be present to share his failures and successes so that they do not repeat his mistakes.

Assessment

At the age of five, [REDACTED] recalls his father and stepfather being incarcerated for most of his childhood. The loss of a consistent father figure and [REDACTED] having to help provide financial and physical care for his younger brothers resulted in an unstable living environment. According to the National Council of Family Relations in 2018, parental incarceration dramatically increases substance abuse and mental health concerns. [REDACTED] father and his stepfather's imprisonment can also be linked to an 18% - 33% increase in aggressive presentation (National Council on Family Relations, 2018). [REDACTED] recalls feeling constant anxiety in his environment and often acted out by fighting without fully understanding why. When asked to elaborate, [REDACTED] stated that he was always worried that he would have to fight to prove himself as a man. [REDACTED] recalls that he has trouble with crowds at a young age and feels anxious when it is a large group of people, he is not familiar with. Likely, the pressure placed on [REDACTED] to continually prove his strength and belonging intensified his anxiety. He was diagnosed with bipolar disorder, severe anxiety, and schizoaffective disorder with his first adult incarceration. Incidents of extreme stress can contribute to a schizoaffective episode. [REDACTED] also has Type 1 Diabetes, who, by self-reporting, admitted to not properly maintaining his insulin levels. Despite being diagnosed at an early age, [REDACTED] was not fully educated on maintenance and the consequences of lack of care.

██████████ mother stated that ██████████ began handling all of his injections at a young age because she had to work so frequently. When asked about her knowledge of Type 1 Diabetes, ██████████ mother could only describe why he was diagnosed and little about the maintenance. Without a solid education at home or while incarcerated, ██████████ was not given the skills to understand and process his diagnosis. ██████████ physical condition of unmaintained Type 1 Diabetes and mental health condition can decrease concentration, severe mood swings, and memory loss (Brands, Bissels, Haan, Kappelle & Kessels, 2005). Continual recidivism can increase detrimental physical and mental effects (Barnert, Dudovitz, Coker, Biely & Chung, 2017). ██████████ did not receive regular care due to bouts of incarceration and a lack of information about his diagnoses throughout his life. The exposure to imprisonment led to the depreciation of the need to monitor and mitigate the adverse effects of lack of treatment.

██████████ is a devoted father of two children with a baby on the way. He is in a positive relationship with ██████████ and maintains regular contact with his mother and brother. Formerly incarcerated individuals that maintain a healthy support network are more likely to succeed after release (Prison Legal News, 2014). Both ██████████ and ██████████ have spoken about their ability to maintain open and honest communication during their marriage. ██████████ family support and positive dynamics in his intimate partner relationship decrease his likelihood of using drugs (Prison Legal News, 2014). ██████████ says that she appreciates ██████████ ability to sit and have open conversations with her children. She stated that she is worried about what she will do without him as her children have already begun to withdraw during his incarceration. As noted, before, parental incarceration raises the chance of future imprisonment for children.

██████████ support network has expanded with his relocation to Selma. ██████████ has a friend who he regularly confides in and meets with through family gatherings at their mutual

dwellings. He has also developed a positive relationship with his bosses, who have maintained their support throughout his incarceration. [REDACTED] change in physical environment and employment increase his opportunity for positive re-entry into the community.

[REDACTED] has spent most of his thirty years in a heightened state of fear, anxiety, and anger. He did not have access to positive coping skills and turned to substance use and aggressive acts to process his adverse childhood experiences. In the last three years, [REDACTED] has begun to change his life for the better. His drug use has dramatically decreased, and his positive relationships vastly outnumber any negative associations. [REDACTED] relocated to maintain a supportive physical and emotional network. Despite being emotionally stunted at five, he has shown positive personal growth within his immediate family.

Recommendation

It is recommended that [REDACTED] participate in a comorbidity program to manage his mental health and substance use needs. Turning Point Full-Service Partnership will provide a full range of needed services for his successful transition. The program will provide individual therapy and intensive case management to assist [REDACTED] in successfully managing his mental health and substance abuse. The program will fully support [REDACTED] as he relocates to Selma with his wife and children and returns to full time employment.

Respectfully submitted for the Court's consideration,

██████████ MSW Student Intern; Fresno State University

██████████ BSW; Defense Social Worker

██████████ MSW, Defense Social Worker Supervisor

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Appendix D

PowerPoint for staff education



Governing Body

National Association of Social
Workers (NASW)

- ❑ Social workers' primary responsibility is to promote the well-being of clients.
- ❑ Social workers engage people as partners in the helping process.
- ❑ Social workers respect and promote the right of clients to self-determination & assist clients in their efforts to identify & clarify their goals.
- ❑ Social workers who are members of an interdisciplinary team contribute to decisions that affect the well-being of clients **by drawing on the perspectives, values, and experiences of the social work profession.**

Role

- Ensure client needs are addressed
- Provide expertise on clients' circumstances and life history
- Assist in presenting early alternatives to incarceration, which can lead to early release
- Collaboration with the client's legal team
- Complete Mental Health diagnoses and Bio-Psycho-Social assessments
- Advocacy for mitigating themes
- Family communication and engagement
- Present understanding of the client's developmental history
- Use a strength-based theory to assist clients in transition

Outcomes of collaboration with Social Work

- ❑ Minimize exposure to the juvenile justice system
- ❑ Increased access to educational & economic opportunities
- ❑ Increased access to behavioral & mental health support
- ❑ Receipt of holistic, skilled & client directed representation meeting best practice standards

Social Work Impact

- ❑ Reduction in client recidivism
- ❑ Drop in system involvement
- ❑ Cost savings
- ❑ Improved life outcomes

Creating an effective collaboration

- ❑ To help guide a multidisciplinary collaboration we have created a referral system that divides the mostly likely needs of the clients that can be met by social work into 6 categories: Housing/Family/Benefits, School Contact, Referrals, Employment Needs, Mentorship & Mental Health

Housing/Family/Benefits

Some examples in this area include:

- ❑ The client is on the run and needs to be contacted
- ❑ The client is homeless and needs emergency housing
- ❑ The family does not want the client in the home
- ❑ The client can benefit from family therapy

School Contact

For mitigation reports social workers may need to reach out to schools for records BUT we can also provide recommendations for consultations in mental health, behavior concerns or speech and language consultations

Referrals



Social workers have been consistently providing AR reports for attorneys which you have hopefully found effective



Social workers can continue to make recommendations for programming that addresses employment, educational continuation and mental health

Employment

- ❑ A client may not require a referral rather a consultation with a social worker to explore steps needed to be successful after release and that can often include employment.
- ❑ Social work employs empowerment theory to work as a facilitator and guide for a client as they search for their goals. The clients become more invested when they have the time to find the goals themselves instead of being told the goals without input

Mentorship

- According to adolescent brain development theories, clients, ages 22-25 are still developing their ability to process emotions, learn self regulation and better understand consequences
- Because of this young clients can benefit from peer mentorship or mentorship from the community at large

Mental Health

The clients we encounter may be experiencing undiagnosed mental health concerns including PTSD from long term institutionalization

- Social work can be tapped to do a mental status exam
- Assessments can provide a clearer understanding of the biological, psychological, social and even spiritual components that have shaped a client
- Therapeutic Intervention can be provided by social workers for clients who are suffering from anxiety, multiple life stressors or have a specific diagnosis that needs treatment. Receiving therapy services can help the client better understand the process, their role in it and how to cope in their current situation

Mental Health

- ❑ Mitigation reports are a way for the social worker to humanize the client.
- ❑ This report does not deny that a crime was committed.
- ❑ Instead the social worker will take a deep dive into the life of the client to share their story through the lens of theory and evidence based research

SW/Client Relationship

The social work department wants the best possible outcome for the client and recognizes that this can be achieved by a purposeful relationship with the client

- ❑ When speaking with the client an ethnographic approach is taken.
- ❑ Instead of asking pointed questions, the social worker asks the client open ended questions.
- ❑ Social workers are trained to listen for *cover terms*: words & phrases used to identify important aspects of one's life. Asking a client to elaborate on *cover terms* provides an opportunity for the client to tell their own story.

Appendix E

ACES Fact Sheet

* Will be presented to potential clients as a quick guide for comprehension and assistance during interviews for mitigation cases.

ACES: Fast Facts

What are ACES?

ACES are **A**dverse **C**hildhood **E**xperiences. These are potentially traumatic events that can occur during your childhood (0-17 years).

What are traumatic events?

Traumatic events can include:

- Experiencing violence, abuse or neglect.
- It can mean being a witness to violence or having a family attempt to die by suicide.
- Growing up in a household with substance misuse or mental health concerns.
- Having separation from parents or having members in your household go to jail or prison.

Why do ACES matter?

ACES have been linked to long term health problems, mental illness and substance misuse as an adult. They can also negatively impact education and/or employment.

Am I the only one?

ACES are common events. In fact, about 61% of adults have experienced at least one adverse childhood experience!

What can I do about it?

It is okay to reach out for help at any age. There are rehabilitative programs available that can provide therapy and/or substance counseling.