

**USING CHILDHOOD TRAUMA AS  
SENTENCING MITIGATION EVIDENCE**

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NOTES

# **Childhood Matters:**

How childhood trauma dictates  
the development and future  
actions of our clients

Dr. Hope M. Hill

## **Example of Early Trauma – Neglect in Context of Poverty**



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## Introduction

- This presentation is designed to present a brief overview of key points related to how complex trauma shapes the lives of our clients, how they see the world and informs their relationships and their actions.
- Trauma is intricately connected to the present and historical social context.

## **Children Don't Develop Themselves in Isolation**

- They are dependent on parents, guardians and caregivers to provide a solid foundation for healthy development
- They are dependent on support from community members who model positive values & healthy behaviors
- They depend on equitable institutions and opportunities for success

- The content herein is guided by a plethora of scientific literature on the impact of trauma on the brain and the intricate connection between trauma and the social context both present and historical. Recommended sources are available.

## Guiding Premise

- Complex trauma in childhood is intricately connected to structural inequality. As Troutt (2014) asserts *the causes of psychological trauma are those forces that make particular environments chronically traumatic. These are forces of racial and economic isolation that structure and reproduce fundamental inequality-the residential and institutional segregation of people by place and resources* (p.5)

## Trauma: What Is It?

- **It is an emotional and physical response to a frightening event or series of events that results in an alteration and dysregulation in the brain.**
- Post traumatic stress disorder describes the psychological symptoms that result after one traumatic event.

## Complex Trauma

- An accumulation of multiple traumatic events beginning in early childhood that continue through childhood into adolescence
- Adversely impacts key developmental processes such as cognitive development, psychological development and brain physiology

## Complex Trauma

- Most debilitating trauma to overcome are the often unavoidable complex traumas that can increase throughout childhood and adolescence and create the propensity to be re-victimized in adulthood.
- Complex trauma experienced by very young children changes the structure and development of the brain in ways that can have life-long adverse effects

## Causes of Complex Trauma in Childhood

- Physical and psychological neglect
- Failing to provide basic needs for food, clothing and shelter
- Physical and psychological abuse
- Sexual abuse and witnessing sexual activity
- Direct victim of violence and indirect victimization through witnessing violence

## Example of Don's Complex Trauma: Neglect

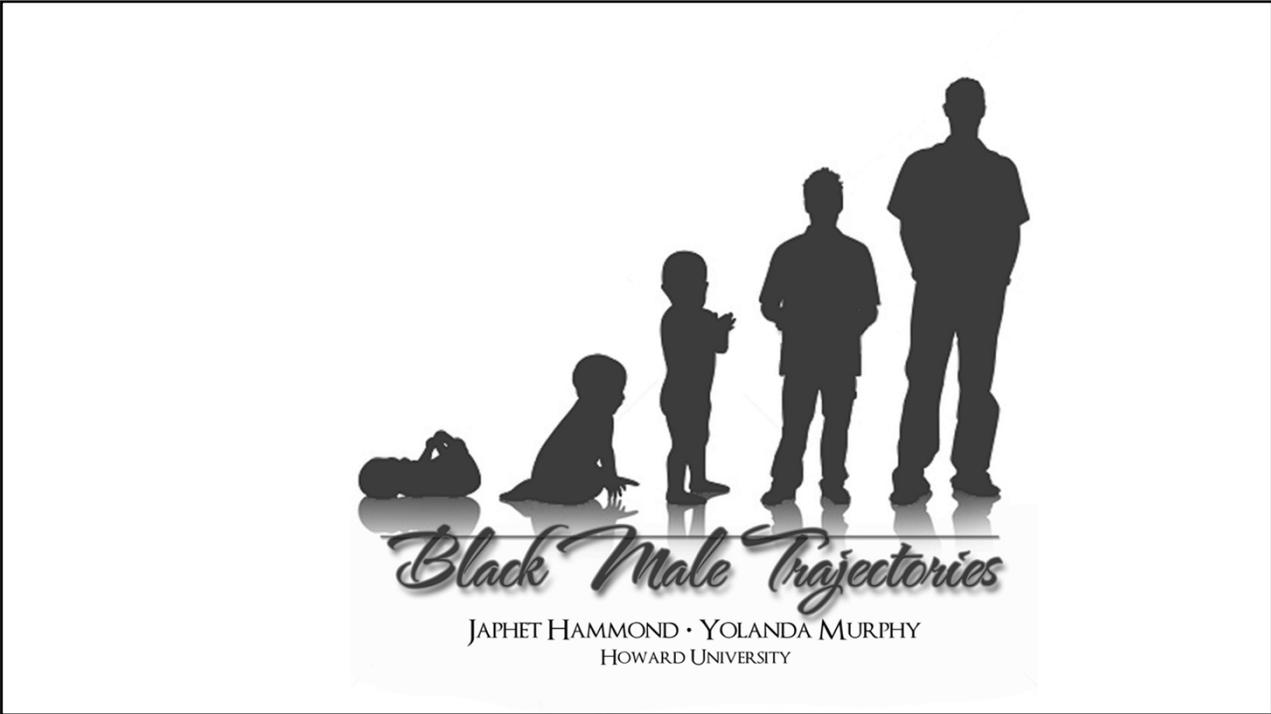


## **Story of Don**

- Wore the same clothes everyday in elementary school
- Always hungry
- Same underwear, socks
- Was bullied and teased
- Mother who was struggling with her addiction put him out at 11
- Slept on neighbors front porches
- Started selling drugs to buy food and clothes

## **Investigation of Trauma**

- Has to be investigated throughout the developmental stages of childhood



# Presence and Role of Trauma in a Developmental Sequence

birth

Before Birth

Parents addiction & domestic violence

Family

GF- pedophile

## Infant/Toddler

6mo

Neglect; Failure to Thrive

18 mo.

Exposure to violence & multiple moves

Since birth

Neighborhood deteriorates

## Intricate Connection Between Complex Trauma and Structural Inequities

- When young children are victims of complex trauma it can change the brain's development and structure in ways that places them on a developmental trajectory toward later involvement in serious violence.

## **Connection Between Structural Inequities and Complex Trauma**

- These types of trauma are disproportionately represented in high poverty, highly segregated communities with a history of structural inequities that shape the daily lives of the residents.

## **Traumatized Children**

- Interact with their environments based on the ways that trauma has shaped their brain, e.g. wariness about close connections to others, hypervigilance, impulsiveness, all which can set them up for further involvement in traumatic situations.

## **Complex Trauma Intricately Connected to Structural Inequity**

- Consider the work of David Troutt (2014) described in the following 2 slides on connecting the impact of structural inequity, trauma and the school to prison pipeline.

## **Results of Complex Trauma and School to Prison Pipeline**

- Children are affected psychologically, cognitively and physiologically by trauma.
- Some traumas are powerful enough to alter brain development in young children before they enter pre-school .
- A child who develops anxiety and depression after an event will suffer in performance in school

## **Complex Trauma and the Brain**

- Traumas that alter brain development contribute to cognitive impairment and lead to behavioral problems & social interactions with authorities.
- Physiological stress responses associated with some trauma – the fight, flight or freeze reactions may lead to a hormonal breaking point where normally adaptive mechanisms become dangerous to health and longevity.

## **School to Prison Pipeline**

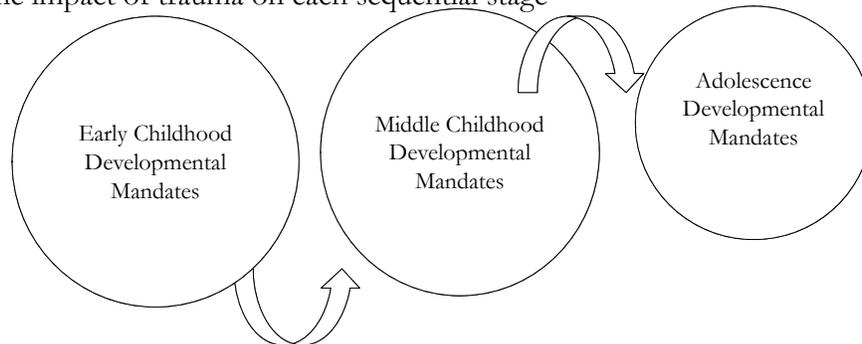
- The “school to prison pipeline” summarizes how the cumulative effects of childhood traumas can predispose a child to problems at school, disciplinary action, dropping out and the hypervigilance and substance abuse that may lead to incarceration or worse. (Troutt, 2014, p.24)
- Few institutions know or can connect child’s behavior to effects on the brain of complex trauma.

## How Does Exposure to Trauma Impact on the Brain?

- Have to investigate trauma across each developmental stage:
- Early childhood
- Childhood
- Teen age years
- Older adolescents
- Young adults

### Developmental Stages

- Examine impact of trauma on each sequential stage



## **Complex Trauma Is More Common Among Many of Our Clients**

- African American and Latino men are disproportionately impacted by complex trauma due to their over-representations in communities impacted by historical structural inequities fueled by institutional racism.

## **Common Indicators of Trauma in Our Adult Clients**

- Hypervigilience
- Isolation
- Blunting of Emotions
- Intrusive Thoughts
- Avoidance
- Use of Substances to Medicate
- Flashbacks
- Affect Dysregulation
- Arousal - Fighting

## **Adverse Childhood Events**

- The following research on adverse childhood events further elucidates the powerful influence of complex trauma in the lives of children and their relationship to serious health and mental health problems in adulthood.

## **Effects of Trauma into Adulthood**

- Adverse Childhood Events (ACE Study)
- The relationship between traumatic childhood experiences and physical and emotional health outcomes in adult life is at the core of the landmark Adverse Childhood Experiences (ACE) Study, a collaborative effort of the

## **Adverse Childhood Events**

- Centers for Disease Control and Prevention and the Kaiser Health Plan's Department of Preventative Medicine

San Diego, CA. The ACE Study involved the cooperation of over 17,000 middle- aged (average age was 57), middle class Americans who agreed to help researchers study the following nine categories of childhood abuse and household dysfunction:

## **ACE Study**

- The ACE Study involved the cooperation of over 17,000 middle-aged (average age was 57), middle class Americans who agreed to help researchers study the following nine categories of childhood abuse and household dysfunction:
  - recurrent physical abuse;
  - recurrent emotional abuse;
  - contact sexual abuse;

## **ACE**

- an alcohol and/or drug abuser in the household;
- an incarcerated household member;
- a household member who is chronically depressed, mentally ill, institutionalized, or suicidal;
- mother is treated violently;
- one or no parents;
- emotional or physical neglect.

## **ACE Study**

- Each participant received an ACE score in the range of 0-9 reflecting the number of the above experiences he/she can claim (e.g., a score of 3 indicates that that participant experienced 3 of the above ACEs).

## ACE 1st Finding

- The study claims two major findings.

**ACEs are much more common than anticipated or recognized,** even in the middle class population that participated in the study, all of whom received health care via a large HMO.

## 2<sup>nd</sup> Finding

- The study's second major finding is that **ACEs have a powerful correlation to health outcomes later in life.** As the ACE score increases, so does the risk of an array of social and health problems such as: social, emotional and cognitive impairment; adoption of health-risk behaviors; disease, disability and social problems; and early death.

## **ACE**

- ACEs have a strong influence on adolescent health, teen pregnancy, smoking, substance abuse, sexual behavior, the risk of re-victimization,
- performance in the work force, and the stability of relationships, among other health determinants.

## **ACE**

- The higher the ACE score, the greater the risk of heart disease, lung disease, liver disease, suicide, HIV and STDs, and other risks for the leading causes of death (Felitti, Anda et al. 1998).

## **ACE**

- The prevalence of ACEs is significantly higher among young African American and Latino males—many of whom live with chronic stress and do not have a regular source of healthcare.

## **Often Heard in Court...**

- The bottom line is that he knew right from wrong didn't he?
- He had a choice didn't he? He made a choice to do the crime, no one held a gun to his head, right?
- He comes from the same projects across the street that most of our clients come from.

## Making Good Choices

- No child is born making good choices
- Children learn how to do that through watching adults make good choices and use good judgment.
- Impact of trauma on brain in addition to immature development of frontal lobes interfere with ability to make good choices especially in emotionally heated situation

## Making Good Choices

- Was he consumed with just surviving day to day and protecting himself?
- Any relationships with individuals who could share their networks with him?

It's the networks that help individuals out of poverty..making connections with teachers, who can recommend summer internships/jobs and who can model not only another way of living for them but provide connections to getting there.



sentencing is more than “merely a means to dispense harsh punishment without taking into account the real conduct and circumstances involved in sentencing,” and the individual person that stands before the Court. *Id.* 54.

Mental illness has been recognized as a sentencing mitigation factor. *Atkins v Virginia* 536 U.S. 304, 307 (2002); *Porter v. McCollum*. 1558 U.S. 30 (2009)(PTSD mitigation factor for sentencing); *United States v. Oldani*, 2009 U.S. Dist. Lexis 50538 (S.D. Va. 2009)(downward departure appropriate based in part on PTSD). Courts have recognized that the amendments to U.S.S.G. § 5K2.13 and policy statements reflect the principle that “punishment should be directly related to the personal culpability of the criminal defendant.” *Penry v. Lynaugh*, 492 U.S. 302, 319 (1989), *abrogated on other grounds*. “[E]vidence about [a] defendant's background and character is relevant” to the sentencing decision, “because of the belief, long held by this society, that defendants who commit criminal acts that are attributable to a disadvantaged background, or to emotional and mental problems, may be less culpable than defendants who have no such excuse.” *Penry*, 492 U.S. at 319 (*quoting California v. Brown*, 479 U.S. 538, 545 (1987) (O'Connor, J., concurring)). In addition, the traditional rationales for punishment have less force when applied to mentally ill and cognitively limited defendants. *United States v. Cantu*, 12 F.3d 1506, 1516 (9<sup>th</sup> Cir. 1993)(PTSD appropriate basis for downward departure under 5K2.13). “Moreover, the amendments demonstrate that, where mental illness or cognitive deficits are a contributing factor greatly or even only limitedly in a crime, such defendants are more likely less-deserving of punishment for punishment's sake than are those without such limitations. Finally, the amendments indicate that prison may not be the appropriate setting for mental-health treatment and that the importance of effective treatment can justify adjustment of the guidelines range. Indeed, it can now be reasonably argued that, in fashioning

an appropriate sentence, courts are now required to consider, and factor in, a defendant's mental illness if they are to be faithful to § 3553(a).” *United States v. Ferguson*, 942 F.Supp. 2d 1186, 1193 (M.D. Ala. 2013).

The sentencing guidelines recognize that the court may depart under U.S.S.G. § 5K2.13 for diminished capacity. For the diminished capacity departure to apply, there must be a causal connection between the offense and the mental condition. *United States v. Glick*, 946 F.2d 335, 339 (4th Cir. 1991). A direct causal link between the offense and the defendant’s mental condition is not required for a departure for diminished capacity. *United States v. Cockett*, 330 F.3d 706, 713 (6th Cir. 2003). This is supported by the plain language of the departure that the “extent of the departure should reflect the extent to which the reduced mental capacity *contributed* to the commission of the offense.” *Id.* at 714. Nowhere does the Guideline state that the mental condition be the “sole cause” of the commission of the offense, indeed, cases have explicitly stated as much. “Diminished capacity need not be the sole cause of the offense to justify a departure, but should ‘comprise[] a contributing factor in the commission of the offense.’” *United States v. Matney*, 375 F. Supp. 2d 482, 488 (W.D. Va. 2005) (citing *United States v. Glick*, 946 F.2d 335, 339 (4th Cir. 1991)).

It follows, then, that “but-for” causation is not required either, and several courts have held so. One district judge has noted that Section 5K2.13 “does not require that the reduced mental capacity be demonstrated to be the sole, or ‘but for,’ cause of the commission of the offense. Indeed, introduction of such a concept would run contrary to the settled proposition of law that an event may result from the confluence of many factors operating at the same time and that, in such a case, each may be a proximate cause.” *United States v. Speight*, 726 F. Supp. 861, 868 (D.D.C.

1989) (citations omitted). The D.C. Circuit later noted that “[a]ll of the circuits to have addressed the issue of causation have rejected a ‘but-for’ test.” *United States v. Leandre*, 132 F.3d 796, 803 (D.C. Cir. 1998) (citing *United States v. Cantu*, 12 F.3d 1506, 1515 (9th Cir. 1993); *United States v. Soliman*, 954 F.2d 1012, 1014 (5th Cir. 1992); *United States v. Glick*, 946 F.2d 335, 339 (4th Cir. 1991); *United States v. Lauzon*, 938 F.2d 326, 331 (1st Cir. 1991); *United States v. Ruklick*, 919 F.2d 95, 97 (8th Cir. 1990)). In *United States v. Dyer*, 216 F.3d 568, 570 (7th Cir. 2000), the court noted that “[b]ut for’ causation is a very weak sense of causation; in fact, it often falls short of the meaning of ‘cause’ in ordinary usage. It is poles apart from ‘sole cause,’” and “but-for” causation is better termed as “necessary condition.” In other words, “there has to be *some* causal connection between the defendant’s mental condition and his criminal conduct in order to warrant a punishment discount under any plausible of penal goals.” *Id.* at 571 (emphasis added).

Here, the psychological evaluation (filed under deal with the Court), and the testimony to be elicited from Dr. [REDACTED] at the time of the sentencing hearing, will demonstrate that [REDACTED] major psychiatric difficulties significantly impacted on/influenced the behavior (being a felon in possession of a firearm) that resulted in the charges filed against him.

Finally, pursuant to 18 U.S.C. § 3553(a), courts must “impose a sentence sufficient, but not greater than necessary to comply with the purposes” of sentencing. The goal of federal sentencing is to fashion a sentence that is based upon an individualized assessment and not wedded to a mathematical calculation. *Carter v. United States*, 564 F.3d 325, 328 (4<sup>th</sup> Cir. 2009).

*The Factors under 18 U.S.C. 3553 Warrant a Community Based Program*

██████████ body is a physical representation of the psychological damage he has suffered throughout his life. He has approximately 15 bullet holes in his body, and still carries two bullets inside his body, one in his chest and one in his back near his spine. (PSR ¶ 87). This physical injury is the window to his tormented psyche. ██████████ needs services to address his psychiatric condition. Further incarceration will only serve to exacerbate his condition. A community based sentence can provide a sentence that is sufficient but not greater than necessary under 18 U.S.C. § 3553.

*Nature of the Offense*

██████████ plead guilty to a single count of being a felon in possession of a firearm. This is a non-violent status offense.

*History and Characteristics*

██████████ was born on ██████████. His mother and father were both fifteen years old when he was born, mere children when themselves. ██████████ birth was further complicated by the fact that his mother may have been drinking during his pregnancy. Needless to say neither parent was ready to become a parent at age fifteen, they were “both in the streets,” so his maternal grandmother took custody of him and moved him to Richmond. (PSR ¶80). His grandmother always worked at least two jobs and also went to school, so he was routinely left alone without adult supervision. His grandmother did the best she could, but she was not able to give ██████████ all the attention he needed. In addition, ██████████ was desperate to be with his father.

At the age of seven, ██████████ grandmother finally gave in to ██████████ desire to live with his father. Unfortunately, his father, who was still only twenty-one at this time, was not

ready to be a father. Instead, his father treated [REDACTED] like a younger brother who simply needed to be tolerated. [REDACTED] father acknowledges this and told the probation officer [REDACTED] [REDACTED] “had to raise himself.” (PSR ¶ 83). His father did not provide the necessary structure and nurturing that [REDACTED] needed. [REDACTED] did not meet his mother until he was 21 years old. He woke up in the hospital, after being shot the final time, to find her in his room. (PSR ¶81). Since then, [REDACTED] has spoken to her by phone, but has never been to California to visit her.

[REDACTED] emotional deprivation was exacerbated by the neighborhood in which he grew up. The majority of [REDACTED] life was spent in Gilpin Court. Gilpin Court is the largest of the six public housing projects in Richmond. According to Richmond Redevelopment Housing Authority, approximately 8,270 people live in the big-six courts. Gilpin Court is the largest housing project with over 780 units. The average annual income of residents of the Richmond Redevelopment Housing Authority is \$8,786. (<http://wtvr.com/2017/04/06/rva-revealed-richmond-housing-projects-history/>). Gilpin Court has also been the scene of tremendous violence. In 1994, when [REDACTED] was living in Gilpin Court, Mr. Goins, a jealous boyfriend came into a house at Gilpin Court and killed Tamika Jones’ entire family because his young lover had become pregnant. The Washington Post and the Richmond Times Dispatch both reported on the murders, the Washington Post painted the physical picture, “The 52-year-old complex is filled with aging brick buildings, sagging clotheslines and rusting swing sets. For a time, Gilpin Court was considered one of the most violent areas of Richmond.”(www.washingtonpost.com/archive/local/1994/10/15/shooting-kills-5-in-violence-torn-richmond).

The Richmond Times Dispatch provided the details:

A man walked into a home killing adults and children in their pajamas. James Randolph, 35, Daphne Jones, 29, Nicole Jones, 9, David Jones, 4, Robert Jones, 3. One child was slaughtered in the crib. Another died clutching Daphne's leg.

Tamika heard their screams. Then the screams stopped, she later testified. And Goins, her lover, came in her room and emptied his pistol into her belly, her 7-month-old fetus taking most of the bullets and saving her life. She hugged and shielded her 9-month-old sister, who was shot in the arm

These deaths added to the 160 homicides that the City of Richmond had already experienced prior to this date in October 1994. (<http://wtvr.com/2014/10/16/20-years-ago-gilpin-court-massacre-in-richmond/>).

██████████ grew up in and around Gilpin Court. He remembers that there were lots of drugs; you could walk out your door and see someone with a needle in his arm; and seeing someone smoke marijuana was so common and so out in the open that he didn't realize it was illegal. There were lots of shootings and killings going on; he saw people shot and killed; and the neighborhood was so dangerous that ambulances wouldn't come into the neighborhood, and so people would die waiting for an ambulance. ██████████ reported that although when he was a young teenager living with his father they moved out of Gilpin Court, he continued to go to school in that area and so he continued to be exposed to all the same problems. ██████████ father offered a similar description of the area in and around Gilpin Court.

██████████ personal witnessed violence and shootings. The first time someone he knew was killed was when he was about 7 years old; that was when one of his cousins was killed; and although he didn't actually see his cousin killed, he heard how his cousin was shot twice, fell down, and then was shot a third time while the killer was standing right over him. ██████████ reported that then a little later, another cousin was shot; that time he heard the shot, and then saw

his cousin running towards the house, bleeding; and then his cousin fell on the porch and died right in front of him. When he was about 14 years old, his best friend was killed; they had been friends since they were young children; and that was really the first incident that felt really up close and personal. His friend was shot in the head as they were standing next to each other, and his friend's head exploded all over both of them. It was also after that incident that he realized that he probably wouldn't live to become an adult.

██████████ reported that then subsequently, he was shot on 4 different occasions. The first time ██████████ was shot, he was about 15 or 16 years old. It was a drive-by shooting; he just happened to be outside; and he was shot in the leg. He noted that there is no record of that incident because he didn't go to a hospital and his aunt took care of him, and also because, of course, he never reported the incident to the police.

██████████ reported that the second time he was shot he was set-up by a 'friend'; the fact that he was set-up hurt him more than being shot; and that messed him up so much that after that incident he didn't trust anyone anymore and he really didn't care about anyone anymore, including women. He then explained that he just felt that the fewer people he talked to the less likely he was to be taken advantage of; he wasn't out to hurt anyone; but instead, he just kept his distance from everyone, and if things got too close, he would cut the relationship off. ██████████

██████████ medical records indicate that this shooting occurred in December 2004 (shortly after he turned 20); he was shot in his left leg, and his left humerus was fractured; and there was also a bullet lodged in his right chest that could not be removed, his third rib was fractured, and there were also multiple bullet fragments lodged in his chest.

██████████ reported that the third time he was shot was the time that his mother came to see him at the hospital, and he noted that when he woke up she was there. ██████████ medical records indicate that this shooting occurred in September 2005 (shortly before he turned 21); he was shot in the abdomen; and he was literally dropped at the hospital by unknown persons, and was found by hospital staff to be in hemorrhagic shock and in dire need of life support. He required emergency surgery which ultimately resulted in a left nephrectomy (removal of his left kidney that had been totally shattered) and a splenectomy (removal of his spleen that had also been shattered); and as a result of various complications, he was hospitalized for about a month. In addition, while hospitalized the bullet that had been lodged in his chest since the 2004 shooting somehow moved to a point where it could be safely removed, and so it was removed. When discharged from the hospital, he still had drainage tubes/catheters in his body that had to be managed.

██████████ reported that the fourth time that he was shot he was shot in the back; the bullet went close to his heart; and he believes that the shooter was trying to kill him. ██████████ medical records indicate that this shooting occurred in September 2010 (shortly before he turned 26 years old).

It should also be noted that not surprisingly, ██████████ medical records indicate that he has had numerous complications from and residual difficulties associated with the multiple times that he has been shot and severely injured. In addition with having to cope with these complications, residual difficulties and associated pain and dysfunction, they have served as an almost constant reminder of the shootings.

The fear and trauma he sustained as a child and young adult made a lasting and devastating impact on [REDACTED]. As psychiatrist Richard G. Dudley, Jr. will explain at the sentencing hearing, exposure to violent, traumatic situations by children impacts their growth, development, and ability to function, even as an adult.

“The combination of repeated childhood trauma and the absence of parental nurture, support and protection can result in the development of multiple psychiatric and neuropsychiatric disorders...”

that can manifest into the following symptoms:

- (1) Trauma-related neurological symptoms (i.e., may cause the development of “fight or flight response”)
- (2) Trauma-related psychological symptoms (i.e., may cause symptoms similar to those experienced by adults with PTSD –hypervigilance, anxiety, hyperactivity)
- (3) Developmental difficulties brought on by poor parenting (i.e., low self-worth, feelings of emptiness)
- (4) Other associated difficulties (i.e., depression, substance abuse, self-medication)

Dudley, Richard G., Jr., M.D., *Childhood Trauma and its Effects: Implications for Police*, New Perspectives in Policing Bulletin, Washington, D.C.: U.S. Department of Justice, National Institute of Justice, 2015. NCJ 248868. [REDACTED] exhibited all of those symptoms at some point. He witnessed crime and violence on a regular basis and ultimately felt the need to carry a weapon; in school he was told he was stupid, it wasn't until his most recent incarceration at the Richmond City Jail that he was diagnosed with Posttraumatic Stress Disorder (PSR ¶ 91). He was motherless as a child and his father was not consistently present in his life so he lacked parental guidance and support. [REDACTED] young life was filled with traumatic events, dysfunction, and hardship. Security, structure, and emotional support were severely lacking.

Though his childhood was replete with risk factors (i.e., no parental influence/nurturing or structure, etc.), protective factors were non-existent. [REDACTED] was a product of his

environment as a child and into adulthood. However, despite the cumulative risk factors and numerous issues he has faced, [REDACTED] has shown that he is not a throwaway and can be rehabilitated. [REDACTED] now understands that his childhood was not normal, and he is not alone in his suffering of nightmares, and hypervigilance. He now understands his diagnosis and is anxious to receive treatment. This is indicative of his potential, ability, and desire to change.

### ***Other Sentencing Factors***

The remaining sentencing factors under 18 U.S.C. § 3553(a)(2) address retribution, deterrence, incapacitation, and rehabilitation. *See Tapia v. United States*, 564 U.S. 319, 325 (2011). This Court is to determine a sentence that is sufficient, but not greater than necessary, to address these factors, “to the extent that they are applicable in light of all the circumstances of the case.” *See* 18 U.S.C. §§ 3551(a), 3553(a); *Tapia*, 564 U.S. at 325. While imprisonment can be useful and necessary in some cases to accomplish retribution and incapacitation, it is certainly not always necessary and appropriate to impose imprisonment to address these concerns. It is certainly not necessary to impose a sentence that includes additional incarceration in this case, as federal supervised release would be a significant restriction on [REDACTED]. The Supreme Court has recognized that supervision imposes a serious restriction on a person’s liberty. *See Gall*, 552 U.S. at 48. Individuals on supervision are “nonetheless subject to several standard conditions that substantially restrict their liberty.” *Id.*; *see also United States v. Knights*, 534 U.S. 112, 119 (2001) (“Inherent in the very nature of probation is that probationers do not enjoy the absolute liberty to which every citizen is entitled.”) (internal citation omitted). Moreover, under 18 U.S.C. § 3563, this Court can fashion a number of conditions to accomplish retribution and incapacitation, as well as deterrence that will also address the importance of mental health

treatment for ██████████, which will serve to protect the community and address the issues that contributed to him becoming involved in this offense.

Imprisonment will not rehabilitate ██████████, as Congress has “recogniz[ed] that imprisonment is not an appropriate means of promoting correction and rehabilitation.” *See* 18 U.S.C. § 3582(a). ██████████ is not a violent person. Additional incarceration in this case would only exist to punish and incapacitate him, which is greater than necessary, given his mental illness, substance abuse, and medical condition. In ██████████ case, deterrence from criminal conduct would be best achieved through mental health treatment. Thus, additional imprisonment, is a punishment that is greater than necessary to accomplish the purposes of sentencing under 18 U.S.C. § 3553(a)(2). As discussed above, a sentence of time-served with at least three years of supervised release with conditions to include community based mental health treatment will appropriately accomplish the purposes of sentencing. His mother has indicated a willingness for ██████████ to come to California and live with her if he is released. This will allow him the opportunity for a fresh start in a new location and allow him to obtain mental health treatment.

### **CONCLUSION**

For the foregoing reasons, ██████████ respectfully requests that the Court sentence him to credit for time served followed by three years of supervised release with special condition the he participate in a community based mental health treatment program. This sentence will be sufficient, but not greater than necessary, to accomplish the purposes of sentencing under 18 U.S.C. § 3553(a).

Respectfully submitted,

[REDACTED]

By: \_\_\_\_\_ /s/ \_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I hereby certify that on [REDACTED], I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following: [REDACTED].

\_\_\_\_\_/s/\_\_\_\_\_  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division

UNITED STATES OF AMERICA

v.

Case No. [REDACTED]

[REDACTED]

**Defendant's Sentencing Position**

Defendant, by counsel, states as his sentencing position that he has no material objections to the presentence report (PSR) or its calculation of his advisory Guideline range as 37 to 46 months. For the reasons stated below, he asks the Court to sentence him to not more than 24 months imprisonment, with recommendations for psychological treatment and the residential drug abuse program (RDAP) while in BOP custody.

***Relevant Facts***

A sentencing investigator and advocate in counsel's office has prepared the memorandum attached hereto as Exh. 1, from review of medical, juvenile justice, school, and other records, as well as extensive interviews with the defendant and members of his immediate family, at least one of whom would be expected to testify briefly at sentencing, as well. The social history and timeline described therein and by the PSR, establish that traumatic events amplified this not yet 23-year-old's early substance and alcohol abuse problems, and suggest that appropriately intense treatment to prompt his recovery from those events, would serve sentencing purposes much more than the trauma of imprisoning him for 46 months, as the government urges.

**██████████ Exhibits Obvious Positive Potential**

Defendant does not come from a family afraid to work. His parents worked constantly for years after the family moved here. Exh. 1 at 1. His older and younger sisters attend pharmacy school and work as a pharmacy technician, respectively. PSR ¶¶ 46, 47.

██████████ did part-time work since high school, including several months as a machinist helper ██████████. PSR ¶¶ 56-59. At the machine company, “He was described as a good worker who kept to himself and did what he was asked. He is eligible for future employment.” PSR ¶ 56.

Growing up, ██████████ was “the clown of the family,” ██████████. He was very social and got along with a lot of people. Exh. 1 at 2. He did well in elementary and middle school. He earned mostly A’s and B’s through middle school, garnered positive teacher comments, and had few absences or tardy appearances. *See id.*

██████████ made several efforts to further his education, even after he started smoking marijuana in 8<sup>th</sup> grade, and his delinquent or criminal behavior commenced in late high school. In August 2008, he enrolled at J. Sergeant Reynolds Community College and earned a B in an intro computer course. *Id.* Other examples of his trying to “do good,” include starting a high school photography club in 2010, completing a College Success Skills course there in 2013, and earning 12 other college credits there in the spring semester of 2014. *Id.* at 3, 5, 6.

***Life-changing trauma inexorably changed ██████████ and amplified his drug use***

The PSR modestly alludes twice to the defendant’s being “involved in a car accident in August 2010, in which his friend died.” PSR ¶¶ 51, 53. That’s like saying the survivors of the Titanic were involved in a boating accident in 1912.

Nearly 65 months later, [REDACTED] hardly mention the crash without flushing and tearing up or openly crying. The accident was caused by a car exiting from the interstate, racing over two lanes, and pushing the car [REDACTED] was driving into the curb, causing it to flip twice. His friend who died, [REDACTED], “was on life support for at least a week but there wasn’t enough response. [REDACTED] mother took him off of life support and he passed away.” Exh. 1 at 4.

By contrast, [REDACTED], the unrestrained driver, suffered few injuries beyond a right knee laceration. *See* Exh. 2 [REDACTED] [REDACTED] had been in “a major motor vehicle collision involving rollover at 50 miles per hour,” according to the hospital. *Id.*

As the discharge summary noted, [REDACTED] acknowledged at the hospital his history of substance abuse. A toxicology screen was positive for amphetamines, cocaine, and opiates. *Id.* The defendant was nevertheless absolved of all responsibility for the wreck, there appearing no dispute that he was driving properly, and the rollover was caused by the other driver. *See* Henrico County Cir. Ct. Case No. [REDACTED]

*The rollover collision which killed his friend in 2010, has haunted [REDACTED] since*

Being absolved of responsibility legally, did nothing to assuage [REDACTED] torrential emotions about the event, emotions too raw to classify as mere “survivor’s guilt.” The wreck reset his view of himself and the world in a way mere substance abuse had not yet done.

As he and his family now recognize, [REDACTED] could not cope with the accident which so traumatized him. In a family which “does not talk about feelings,” however, as his younger sister

puts it, ██████████ 17 at the time, was predictably unable to express and cope with those feelings. *See* Exh. 1 at 4; *see also id.* at 1 (older sister saying family “has never been ‘too big on emotions.’”) His depression escalated, as did his substance abuse, probably worsened by the antidepressants lawfully prescribed to him after the crash.

Not surprisingly, this, in turn, accelerated ██████████ struggles with the law. Before the crash, the boy who only three years earlier was drug free and getting good grades, suffered just two mundane, obviously drug or alcohol related juvenile delinquency adjudications, with no active commitments or supervision. *See* PSR ¶¶ 25-26. The latter of these was resolved on November 12, 2010, about two months after the defendant’s friend was taken off life support and died. In literally the next 11 days, he would suffer two arrests: (1) for the credit card fraud charges which led to a 10 month juvenile commitment here, and (2) for the North Carolina drug-related charges which led to (all suspended) time of 6 to 8 months under that state’s unique sentencing law. PSR ¶¶ 28, 29. He was still just 17 years old at the time, although the North Carolina case ultimately resulted in an adult disposition.

The local juvenile commitment ██████████, was the longest time ██████████ had gone drug free since age 15. Exh. 1 at 5. Within three months after his release from that, he picked up his last felony charges before this one; they were 10 days apart. *See* PSR ¶¶ 30-31.

Since February 2012, when he was still only 19 years old, ██████████ only legal troubles involved minor driving offenses, and the February 2014 state charges later dropped in lieu of this federal prosecution. *See* PSR ¶¶ 32-34, 41. His substance abuse continued unabated, except when supervised. So too, did his battles continue, with depression, post-traumatic stress,

and recurring bouts of paranoia and sleep deprivation. During this time, two of [REDACTED] friends died, one definitely of an overdose, and his father was diagnosed with colon cancer. *See* Exh. 1 at 6-7.

### *Discussion and Analysis*

“Emerging science about brain development suggests that most people don’t reach full maturity until the age 25.” NPR, Brain Maturity Extends Well Beyond Teen Years (Oct. 10, 2011), <http://www.npr.org/templates/story/story.php?storyId=141164708>

The Supreme Court recognized this years ago, in positively quoting similar observations from the district judge who had the audacity to impose probation on a young man whose prodigious college drug dealing activities earned him \$30,000 and Guidelines recommending 30 to 37 months in prison. *Gall v. United States*, 552 U.S. 38, 58 (2007).

To the predictable response of the prosecution that [REDACTED] is no Mr. Gall, the reply is a simple one: that misses the point. Maturity concerns support---indeed, compel---a different view of youthful offenses, and how to view the conduct of youthful offenders. In banning capital punishment of minors, for example, the same Court which decided *Gall* observed the “marked and well understood” differences in culpability between adults and youth. It added that even expert psychologists have difficulty differentiating young offenders whose crime reflects “transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” *Roper v. Simmons*, 543 U.S. 551, 572-73 (2005).

The observations regarding maturity are arguably even more important here, for several reasons.

First, all [REDACTED] countable priors come from ages 16-19, and 4 of his 7 original criminal history points stem from age 17.

Second, it seems impossible to overstate the impact of the 2010 rollover and death of the defendant's friend on the then 17-year-old's development arc. Even serious high school substance abuse, ultimately subsides for millions of adolescents during college or through general maturing, and the discovery of alternate friends and sources of comfort or escape. *See, e.g.,* NIH Nat'l Inst. on Drug Abuse, DrugFacts: Nationwide Trends (rev. June 2015), at <http://www.drugabuse.gov/publications/drugfacts/nationwide-trends> (in 2012 and 2013, people reporting illicit drug use in past month by age peaked for 18-20 age group, dropped by more than a third by late 20s, and by 58 to 63 percent by late 30s). The car crash changed everything for young [REDACTED] however, prompting a spiral into what seems more like self-flagellation, than simply escape or comfort or following the crowd.

Third, [REDACTED] now demonstrates at least some recognition of the connection between his mental health and his substance abuse, and the need to control his criminal conduct. This awareness is an important precursor to recovery. It is perhaps no coincidence that this occurs as he approaches age 23, almost two years since his federal offense, a period unmarred by any other criminal charge.

Two other points bear emphasis. The first concerns the government's position that [REDACTED] is a dangerous defendant. This defendant's past felony conduct includes credit card fraud and possessing with intent to distribute less than one half ounce of marijuana, matters uncovered days apart when he was 17 years old and about two months removed from his car wreck. His only other drug distribution related conviction likewise involved marijuana. The

high speed chase accompanying the half-ounce drug charge seems more an effort at self-destruction, than a conscious effort to endanger others. As for the brandishing related to this federal offense, that is of course a state court misdemeanor. Va. Code 18.2-282(A). The subject firearm was also recovered near the sidewalk practically in front of the party, where a government witness told grand jurors that [REDACTED] was “beat up,” testimony consistent with police reports and photographs reflecting that when found, the defendant had abrasions. The same witness told the grand jury that the brandishing involved solely the defendant’s lifting his shirt to show that he was armed, and not his wielding it in any way. In other words, it looks like the skinny Asian defendant tried unsuccessfully to stem his own assault.

The last issue concerns the essence of the Government position, which is that 46 months imprisonment is the least sentence sufficient to effect the four sets of statutory purposes described in 18 U.S.C. § 3553(a)(2). Evidence based sentencing principles suggest otherwise.

Adequate deterrence is one of the four primary statutory sentencing factors. 18 U.S.C. § 3553(a)(2)(b). “Empirical data does not support the view that longer sentences actually promote specific or general deterrence[.]” Sarah French Russell, *Rethinking Recidivist Enhancements: The Role of Prior Drug Convictions in Federal Sentencing*, 43 U.C. Davis L. Rev. 1135, 1187 (2010) (footnotes omitted); accord Michael Tonry, *Purposes and Functions of Sentencing*, 34 Crime and Justice 1, 28-29 (2006) (“Imaginable increases in severity of punishments do not yield significant (if any) marginal deterrent effects,” a finding repeatedly confirmed by National Academy of Science panels since 1978).

Congress expressly precludes imposing or lengthening a prison term for rehabilitative

purposes, although rehabilitation and training or treatment are in general among the four sets of § 3553(a)(2) factors. *See Tapia v. United States*, 546 U.S. 319 (2011); 18 U.S.C. § 3553(a)(2)(D). Moreover, there seems no suggestion from anybody that federal prison based drug and mental health programs are both available and more effective than inpatient or intensive outpatient programs outside prisons, compliance with which would be enforced as a condition of supervised release.<sup>1</sup> In any event, a prison term of not more than 24 months, should be sufficient to provide the defendant with whatever intensive rehab opportunities the prison system offers.

The other factors include respect for the law, “just punishment,” and protecting the public from further crimes of the defendant. 18 U.S.C. § 3553(a)(2)(A), (C). A 24 month sentence matches the time [REDACTED] has gone charge-free since the incident which gave rise to this case. It more than triples the only active adult time imposed on him. It represents 40 percent of what the law deems his adult life to date. It will be followed by a 3-year term of supervised release, with its corresponding services and burdens, burdens sufficient to constitute punishment, because supervision involves a “substantial restriction of freedom.” *Gall v. United States*, 552 U.S. 38, 44 (2007). This represents just punishment, and there is no evidence that adding 22 months of expensive imprisonment is necessary to protect and promote respect for the law.

Respectfully submitted,

[REDACTED]

By: \_\_\_\_\_ /s/  
Counsel

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<sup>1</sup> The Bureau of Prisons does appear to offer a dual diagnosis Residential Drug Abuse Program (RDAP) in FMC Lexington KY, FMC Carswell TX, and FCI Terminal Island, CA. “Dual diagnosis RDAPs provide specialized treatment services for the inmate with co-occurring substance abuse and mental illness and/or medical problems.” Directory of Bureau of Prisons’ National Programs (5/22/2015), [http://www.bop.gov/inmates/custody\\_and\\_care/docs/BOPNationalProgramCatalog.pdf](http://www.bop.gov/inmates/custody_and_care/docs/BOPNationalProgramCatalog.pdf)

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CERTIFICATE OF SERVICE

I hereby certify that on [REDACTED], I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to all counsel of record, including specifically [REDACTED]

\_\_\_\_\_  
/s/

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