



# LONE STAR

## JUSTICE ALLIANCE

### Mitigation Evidence Worksheet

Below is a worksheet to help you identify mitigation evidence. Note that records should be requested concerning not only the respondent, but also his parents, grandparents, siblings, and children. A multi-generational investigation frequently discloses significant patterns of family dysfunction and may help establish or strengthen a diagnosis or underscore the hereditary nature of a particular impairment. The collection of corroborating information from multiple sources – a time-consuming task – is important wherever possible to ensure the reliability and thus the persuasiveness of the evidence

- I. *Immaturity, impulsiveness, and failure to appreciate risks and consequences. These “hallmark features” of youth include the respondent’s age, namely the respondent’s “immaturity, impetuosity, and failure to appreciate risks and consequences.”*

A. **Emotional and mental health:** This includes everything concerning your respondent’s emotional and mental wellbeing as a child and youth.

#### **What you should think about:**

- Any mental health problems
- Learning problems or disabilities
- Hospitalizations
- Counseling, or failure to be given counseling
- Physical illnesses or injuries
- Alcohol or drug use and/or abuse
- Pre-natal and birth trauma
- Malnutrition
- Developmental delays
- Brain damage/head injuries
- Exposure to violence in the home or neighborhood

#### **Start a list of possible sources for:**

Specifically, you may demonstrate these hallmarks of youth by pointing to documents that demonstrate any hospitalizations, mental and physical illnesses or injuries, any alcohol or drug use, pre-natal and birth trauma, malnutrition, developmental delays, and neurological damage.



**B. Education:** Anything related to school and your respondent's ability to learn.

**What you should think about:**

- Grades prior to your arrest
- "Held back" a grade?
- Tested for learning disabilities?
- Behavior problems
- Special educational needs (Did he have an IEP or "Student Study Team"?)
- Was he referred for special needs testing, but never got services?

**Start a list of possible sources for:**

You may seek to identify witnesses who can testify about and gather documents related to your respondent's educational achievement, performance, behavior, and activities, special educational needs (including cognitive limitations and learning disabilities) and opportunity or lack thereof, and activities.

**C. Employment:** Any job situation your respondent had, paid or not, or his attempts to get work that failed.

**What you should think about:**

- Any employment?
- Other skills?
- Things that kept your respondent from getting a job?

**II. Family and home environment:** This is very broad and includes anything about your respondent's life at the time of the crime, or his family's history that might have influenced or affected him. Here you will want to tell your respondent's life story.

**What you should think about:**

- Any physical abuse
- Any sexual abuse
- Any emotional abuse
- Any neglect or abandonment
- Foster care or moving from relative to relative
- Homelessness
- Poverty
- Any family history of mental illness, brain impairments, substance abuse,



- or domestic violence, or instability in your respondent's family
- Your respondent's neighborhood and school environment, including violence or gangs
- Peer influence
- Other traumatic things like being around violence, the loss of a loved one, or a natural disaster
- Experiences of racism or other social bias
- Cultural or religious influences
- Failure of the government or others to help your respondent as a child who needed help (for example, leaving him in an abusive home, or putting him in foster care or juvenile justice placements that were harmful to him, exposed him to further neglect, abuse or violence)

**Start a list of possible sources for:**

You may consider identifying witnesses that are familiar with your respondent's life history, including: (1) members of your immediate and extended family; (2) neighbors, friends and acquaintances who know his family; (3) former teachers, clergy, employers, co-workers, social service providers, and doctors; or (4) correctional, probation or parole officers. Identify witnesses who can testify about and gather documents related to physical, sexual or emotional abuse; family history of mental illness, cognitive impairments, substance abuse, or domestic violence; poverty, familial instability, neighborhood environment and peer influence; other traumatic events such as exposure to criminal violence, the loss of a loved one or a natural disaster; experiences of racism or other social or ethnic bias; cultural or religious influences; failures of government or social intervention (e.g., failure to intervene or provide necessary services, placement in poor quality foster care or juvenile detention facilities).

- III. The circumstances of the crime, including how much your respondent participated in the crime and the way family and peer pressure may have affected your respondent:** This is about your respondent's role in the crime, and whether he had the intent to kill. It is important that he does not attempt to minimize his role in the offense if the facts are clear that he had a large role.

**What you should think about:**

- Elements of the charged offense(s), including the element(s) alleged
  - Whether he was charged as the primary shooter/killer or whether he
- was convicted under the felony murder rule or as an aider and abettor



- How the judge viewed your respondent's case during his sentencing, specifically which facts the judge knew about and considered and which facts the judge did not know about when s/he sentenced your respondent to LWOP
- Whether any of your respondent's co-respondents or other participants in the crime were adults (over the age of 18)

**Start a list of possible sources for:**

Court records; police reports; autopsy reports; photos; video or audio tape recordings; and crime scene and crime lab reports. Identify: the elements of the charged offense(s), including the element(s) alleged; consider whether your respondent was charged as the primary shooter or as an aider and abettor; consider how the judge viewed your respondent's case during his sentencing, specifically the facts considered by the judge when making the decision to give a sentence of life without parole.

- IV. The effect of youthfulness on dealing with the criminal justice system:** The possibility that your respondent might have been charged and convicted of a lesser offense, but because he was young at the time of the crime and may have had less ability than an adult to deal with police officers or prosecutors, plea agreements, and assisting his own attorneys.

**What you should think about:**

- Difficulties in dealing with the police due to his young age and perspective
- Turning down a plea deal and why
- Not understanding his attorney, what was happening in court, or the sentence he was facing
- Not telling his attorney the truth about co-respondents or other issues
- Influence from adults in jail
- Whether he had any juvenile adjudications (convictions) and for what crimes

**Start a list of possible sources for:**

People who could make statements about how your respondent dealt with justice system; court records; etc.

- V. The possibility of rehabilitation:** We believe that the court will generally look at your respondent's history both before and after the crime.



**What you should think about:**

- His prior juvenile and adult system experience
  - Programs he was in or services he received prior to the crime and how responsive he was to those services
  - What he is doing currently, including programming; dropping out of gangs; changed ways of thinking;
- books read; religious practices; helping or mentoring others around him; sobriety or services
  - Whether he feels remorse, regret, or sadness about his role in the crime and what happened to the victim, his or her family and the community

**Start a list of possible sources for:**

People who can make statements and documents about your respondent's conduct and achievements in prison or other facilities; your respondent's employment history and skills and performance, and barriers to employability, your respondents own list of ways he has tried to develop and become a better person even without access to programs.