

## Chapter SC 6

### MITIGATING CIRCUMSTANCES; AGGRAVATING CIRCUMSTANCES; CIRCUMSTANCES NOT TO BE CONSIDERED AS EITHER MITIGATING OR AGGRAVATING

SC 6.01 Mitigating circumstances  
SC 6.02 Aggravating circumstances

SC 6.03 Circumstances not to be considered as mitigating or aggravating

**SC 6.01 Mitigating circumstances (1)** Mitigating circumstances may require that the guideline sentence not be imposed. Mitigating circumstances to be considered in sentencing decisions include but are not limited to the following:

(a) The offender's involvement in actual offense is minimal or due to coercion, duress, or ignorance that the offense constituted a crime.

(b) The offender cooperated with authorities in apprehending or prosecuting other offenders.

(c) The offender's life, conduct or behavior has become stable since the offense; the offender has secured a job, or ended his or her association with known criminals.

(d) The offender has maintained a substantial crime-free period, adult and/or juvenile, before this offense occurred.

(e) The offender has demonstrated responsible action and judgment in other aspects of his or her life.

(f) The offender has made or will make restitution.

(g) The offender will participate in drug or alcohol treatment, or emotional/mental health treatment, and it has been determined that such treatment will likely deter further criminal activity.

(h) The offender lacked substantial capacity for judgment due to physical or mental impairment. This does not include voluntary use of intoxicants such as drugs or alcohol.

(i) The offender's age impaired judgment due to extreme youth or extreme age.

(j) The victim desires no prosecution or lenient treatment of the offender.

(k) The recommendation of the district attorney involves lenient treatment of the offender.

(l) Any other circumstances as determined by the sentencing judge.

**History:** Cr. Register, December, 1985, No. 360, eff. 1-1-86.

**SC 6.02 Aggravating circumstances. (1)** Aggravating circumstances may require that the guideline sentence not be imposed. Aggravating circumstances to be considered in sentencing decisions include but are not limited to the following:

(a) Special vulnerability of the victim, such as the victim being young, elderly, handicapped, or visibly pregnant.

(b) Extreme injury to the victim including permanent physical or mental injury, disfigurement, or permanent handicap such as blindness.

(c) Wanton or extreme cruelty or depravity toward the victim.

(d) The victim desires full prosecution of the offender.

(e) The offender used or threatened to use a firearm or other particularly menacing or dangerous weapon, if this fact is not included in matrix scoring.

(f) The circumstances of the offense indicate premeditation or extensive planning.

(g) There is extensive property damage, or contraband of unusual or great value such as artwork or a large amount of money.

(h) If multiple participants, the offender took major role or directed offense.

(i) The offense involved multiple victims.

(j) Prior juvenile offenses, especially prior violent juvenile offenses, if they are not included in matrix scoring.

(k) Prior adult misdemeanors, especially prior violent misdemeanors.

(l) Offenses that are read into the record, if they are not included in matrix scoring.

(m) The attitude or behavior of offender showed lack of remorse.

(n) The recommendation of the district attorney involves lengthy sentences for the offender.

(o) Any other circumstances that are considered important by the sentencing judge and that are not included in the guidelines scoring.

**History:** Cr. Register, December, 1985, No. 360, eff. 1-1-86.

**SC 6.03 Circumstances not to be considered as mitigating or aggravating. (1)** The following non-exclusive factors may not be considered as aggravating or mitigating in sentencing:

(a) The race of the offender.

(b) The religious beliefs of the offender.

(c) The gender of the offender.

(d) The exercise of constitutional rights by the offender.

**History:** Cr. Register, December, 1985, No. 360, eff. 1-1-86.