

Mitigation Checklist

Mitigation evidence is information about a client's life, background, and circumstances that may support a reduced sentence, challenge the application of the death penalty, or inform a clemency application. It is not an excuse for the offence. Its purpose is to give the decision-maker a fuller picture of who the client is and why they deserve a more lenient outcome.

For foreign nationals, mitigation work carries additional urgency and complexity. Key evidence is often held in another country, language barriers can obscure critical information, and factors such as trafficking, denial of consular access, and cultural isolation are frequently overlooked. This checklist is designed to help you identify, gather, and organise the full range of evidence relevant to your client's case.

A note on building the case

Mitigation evidence should be gathered from the moment you come into contact with the detained individual and continued through every stage - trial, appeal, and clemency. Multiple visits are usually necessary. Build trust before asking sensitive questions. The aim is not to compile a list of facts but to construct a human story that the court or decision-maker can understand.

For foreign nationals especially, invest time in gathering evidence from the home country. Family members, school records, medical history, and community witnesses may all hold crucial information that would otherwise never reach the court.

Mitigation Checklist

PART A: Factors That May Disqualify the Client from the Death Penalty

These factors, if established, may render a death sentence unlawful under international law or the domestic law of the detaining country.

Juvenility

- Was the client under 18 at the time of the alleged offence?
- Is there a birth certificate, school record, or other document that confirms their age?
- If no documents exist, have family members, teachers, or others been interviewed to establish an approximate age?

Note: some clients may not know their own age. If there is any doubt, investigate.

Mental illness or intellectual disability

- Does the client have a diagnosed or undiagnosed mental health condition?
- Was there any evidence of mental illness or intellectual disability before arrest, during detention, or at the time of the offence?
- Has a mental health assessment been carried out? If not, has one been requested?
- Are there medical or psychiatric records available, including from family members in the home country?

Physical disability

- Does the client have a physical disability that may be relevant to sentencing?

Pregnancy

- Is the client currently pregnant or was she pregnant at the time of sentencing?

Note: some jurisdictions prohibit execution of pregnant women.

PART B: Factors Specific to Foreign Nationals

These factors are particularly relevant to clients detained abroad and are frequently missed.

Denial of consular access

- Was the client informed of their right to consular notification at the time of arrest?
- Was the consulate notified without delay?
- Was consular access refused or delayed? If yes, document this carefully — denial of consular access in a death penalty case may constitute a violation of the right to life under ICCPR Article 6.
- Did the absence of consular support affect the client's ability to obtain a lawyer, understand proceedings, or gather evidence?

Language and interpretation

- Did the client understand the language used at arrest, during interrogation, and during trial?
- Was a competent interpreter provided at every stage?
- Was the client asked to sign documents in a language they did not understand?
- Were witnesses or evidence presented in a language the client could not follow?

Human trafficking and coercion

- Is there any reason to believe the client was trafficked or coerced into the offence?
- Was the client financially or emotionally dependent on someone who directed their actions?
- Was the client acting under fear of harm to themselves or a family member?

Note: trafficking victims are often found in drug-related cases. Do not assume consent to transport/possess drugs.

Immigration and travel circumstances

- How did the client come to be in the detaining country? Was this their choice?
- Were their travel documents arranged by someone else?
- Was the client in an irregular immigration situation that may have affected their access to legal support?
- Are there immigration detention records from the home country or elsewhere?

Cultural and social isolation

- Did the client have any support network in the detaining country?
- Were they isolated from family, community, or religious support?
- Are there cultural or religious factors relevant to understanding their behaviour or circumstances?

PART C: Personal and Life History

A thorough life history investigation is the foundation of effective mitigation. Gather information across three generations where possible.

Early childhood

- Were there complications during pregnancy or birth?
- Were developmental milestones reached on time — walking, talking, learning?
- Was the client exposed to violence, neglect, or abuse in early childhood?
- Were there adverse childhood experiences (family breakdown, extreme poverty, bereavement)?
- Was there exposure to harmful substances in the home or work environment?

Childhood and adolescence

- What was the client's experience of education — attendance, learning difficulties, exclusions?
- Were there behavioural problems or involvement in delinquency?
- Were there hospitalisations, accidents, or significant injuries, including head injuries?
- Was there exposure to community or street violence?
- Were there positive adults, mentors, or stable relationships in the client's life?
- Was there involvement in sports, religion, or community activities?

Adulthood

- What is the client's employment history? Are there unexplained gaps?
- Were there periods of hospitalisation, serious illness, or significant trauma?
- What is the client's relationship history — spouse, children, family ties?
- Was there a history of substance use or dependency?
- Has the client had any prior involvement with the criminal justice system?
- Was there military service?

Multi-generational family history

- Is there a history of mental illness, substance use, or trauma across the client's family?
- Were parents or grandparents exposed to violence, displacement, or persecution?
- Were there patterns of poverty, marginalisation, or discrimination across generations?

PART D: Mental Health and Cognitive Functioning

- Has the client ever been diagnosed with a mental health condition?
- Were there signs of mental illness before arrest that were not formally diagnosed?
- Has the client's mental health deteriorated during detention?
- Are there signs of cognitive impairment — difficulties with memory, reasoning, or understanding?
- Has the client suffered a traumatic brain injury at any point? Have all available medical records been obtained?
- Is there a history of substance dependency that may affect cognitive functioning?
- Has a mental health expert been consulted? Has a formal assessment been requested from the court if needed?

PART E: Circumstances of the Offence

- What was the client's actual role in the offence? Was it minor or peripheral?
- Was there evidence of provocation, duress, or diminished capacity at the time?
- Was the client acting under instructions from another person?
- Is the prosecution's evidence reliable — were there issues with witness testimony, police conduct, or the chain of evidence?
- Was a confession obtained? If so, was it voluntary and did the client understand what they were signing?
- Does the client maintain innocence? If so, what evidence has been gathered to investigate this?

PART F: Character and Conduct

- Does the client have a positive prior character — employment, family responsibility, community involvement?
- Does the client have a first-time or limited criminal record?
- Has the client shown remorse?
- What is the client's conduct in detention — relationships with staff and other prisoners, participation in available activities?
- Are there letters of support from family members, employers, religious figures, or community members?
- Are there photographs, certificates, or other materials that humanise the client?
- Does the client have dependents — children, elderly parents — who rely on them?

PART G: Fair Trial Concerns

Violations of fair trial rights do not automatically provide grounds for acquittal, but they are relevant to sentencing, appeal, and UN complaints.

- Was the client denied or delayed access to a lawyer?
- Was the lawyer competent and adequately briefed?
- Was mitigation evidence gathered and presented at trial?
- Was the client's mental health or intellectual capacity assessed before or during trial?
- Were there problems with interpretation during any stage of proceedings?
- Was the client informed of all charges and their potential consequences in a language they understood?
- Were there any irregularities in police conduct — fabricated evidence, coerced confession, failure to disclose information?

PART H: Collateral Witnesses to Interview

Beyond the client, the following people may hold important information for the mitigation case:

- Parents and siblings
- Extended family (grandparents, aunts, uncles, cousins)
- Spouse or partner
- Children (where appropriate)
- Childhood friends and schoolmates
- Teachers and coaches
- Employers and colleagues
- Neighbours
- Religious leaders or community figures
- Doctors, social workers, or treatment providers
- Fellow prisoners or former detainees
- Consular officials who had contact with the client